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FISCAL IMPACT REPORT

SPONSOR Hochman-Vigil ORIGINAL DATE 02/07/20
LAST UPDATED _____ HB 337

SHORT TITLE Preprosecution Diversion Program SB _____

ANALYST Dick-Peddie

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$0.0	\$250.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
New Mexico Auditor

Responses Received From
Administrative Office of the Courts (AOC)
Public Defender Department (PDD)
New Mexico Attorney General (NMAG)

No Response Received
Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 337 appropriates \$250 thousand from the general fund to the Administrative Office of the District Attorneys (AODA) for the purpose of drug testing for individuals referred to preprosecution diversion programs throughout the state.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Preprosecution diversion programs, designed to divert defendants amenable to rehabilitation from the criminal justice system, exist in every judicial district per the Preprosecution Diversion Act [31-16A-1 to 31-16A-8 NMSA 1978].

Defendants are eligible to participate in preprosecution diversion programs if they have no prior

violent felony convictions and the defendant is willing to submit to conditions of the program. A defendant may meet the above requirements and be denied entry into a preprosecution diversion program at the discretion of the district attorney. A district attorney may set any other additional requirements within their jurisdiction for program participation, including requiring a defendant to waive their right to a speedy trial, or sign an admission of guilt to be submitted if the defendant cannot successfully fulfill the requirements of the program.

Preprosecution diversion programs typically require a defendant to remain sober, verified by monthly, weekly, or randomly administered drug testing. The costs for these tests has historically been funded through fines paid by program participants. However, costly fees implemented by preprosecution diversion programs prohibited many otherwise low-risk defendants from participating. To address the issue, criminal justice reform legislation passed in the 2019 legislative session and enacted in July 2019 removed requirements for defendants to reimburse district attorney offices for costs associated with the program. Some district attorney offices still collect fees and fines from pre prosecution diversion participants, permissible by language enabling a DA to implement “reasonable conditions” for defendants. These fees go to the District Attorney fund, housed in AODA. According to the AODA FY19 audit, the District Attorney fund has a balance of \$268.7 thousand, an increase of about \$78 thousand, or 41 percent, over the FY18 fund balance.

The Administrative Office of the Courts (AOC) stated that an increase of funding for preprosecution diversion programs may lead to a decrease in judicial workload, as more cases are resolved without formally entering the criminal justice system. Similarly, the Public Defender Department (PDD) stated that if the appropriation leads to more individuals successfully completing preprosecution diversion programs, long-term workloads for PDD may decrease. However, PDD also noted that “substance misuse is a public health issue and relapse is to be expected. If the appropriation leads to pervasive positive drug tests that lead to an increase in defendants being forced out of the program and into the criminal judicial process, [PDD] misdemeanor and felony caseloads could increase”.

The appropriation of \$250 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY21 shall revert to the general fund.

SIGNIFICANT ISSUES

The bill does not provide provisions on how much of the appropriation each district should receive from AODA. Assuming the funding is spread evenly across the 14 judicial district attorney offices, each DA would receive about \$17 thousand for their respective programs. AODA did not submit agency analysis for HB 337.

PDD submitted the following concerns over the increased use of drug testing in diversion programs:

Generally, preprosecution diversion is a great alternative to criminal prosecution to address underlying causes of criminal behavior and reduce recidivism. However, relapse is a natural part of substance misuse recovery and if increased drug testing leads to more defendants being forced out of the program, the bill could lead to a less effective program overall.

PERFORMANCE IMPLICATIONS

All district attorneys report the number of cases in which a defendant was referred into a pre-prosecution diversion program to the LFC quarterly. The output for this measure may increase with more funding for diversion programs.

ADP/al