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**FISCAL IMPACT REPORT**

SPONSOR:	Beam	DATE TYPED:	02/01/00	HB	151/aHJC
SHORT TITLE:	Adult Mental Illness Services			SB	
				ANALYST:	Esquibel

**APPROPRIATION**

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
	\$ 970.0			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**SOURCES OF INFORMATION**

Public Defender Department

Department of Public Safety

Corrections Department

Department of Health

Human Services Department

## **SUMMARY**

### Synopsis of HJC Amendments

The House Judiciary Committee amendments to HB151 remove the requirement for the Department of Health to use the appropriation in the bill to contract with forensic intervention consortiums to provide services to adults with mental illness who would otherwise be incarcerated.

### Synopsis of Bill

The bill appropriates \$970.0 to contract with forensic intervention consortiums for the provision of services to adults with mental illness who would otherwise be incarcerated.

### Significant Issues

The Public Defender Department indicates there must be agreements between attorneys (mainly assistant district attorneys and public defenders) to assure work performed by DOH on behalf of mentally ill adults is not subject to subpoena and discovery. The department indicates only its employees, not DOH personnel or contractors, are covered by attorney-client privilege which is recognized by the courts.

The Public Defender Department indicates exposing persons with mental illness to unprotected inquiries leaves them more vulnerable than persons without mental disabilities, creating an unconstitutional violation of equal protection for this class of defendants.

## **FISCAL IMPLICATIONS**

The bill appropriates \$970.0 in general fund in FY01 to the Department of Health's (DOH) Behavioral Health Services Division.

The Department of Health's Behavioral Health Services Division currently funds \$200.0 for services to adults with mental illness who would otherwise be incarcerated through forensic intervention consortiums utilizing both pre- and post-booking elements in Bernalillo and Dona Ana counties.

The Public Defender Department suggests that funding for early intervention services for any incarcerated person should also include funding for the Public Defender Department in order to assure the target group's constitutional rights are protected.

#### **ADMINISTRATIVE IMPLICATIONS**

The Public Defender Department indicates if passage of this bill results in an increase of unprotected communications with indigent defendants, then the department would incur the cost of litigating the affected defendants' 5<sup>th</sup> and 6<sup>th</sup> Amendment rights to secure counsel and to remain silent.

#### **TECHNICAL ISSUES**

The Human Services Department indicates the bill should specify if targeted services include residential alternatives to incarceration or only outpatient treatment. Medicaid currently covers outpatient mental health professional services for alcohol abuse and psychiatric care; but Medicaid cannot cover persons who are incarcerated.

The Human Services Department indicates the bill does specify if "mental illness" includes social maladjustments such as occupational maladjustment, marital maladjustment, sexual dysfunctions and personality disorders.

#### **OTHER SUBSTANTIVE ISSUES**

The Department of Health indicates there are three types of jail diversion programs: (1) Pre-booking diversions occur at the point of contact with law enforcement and relies heavily on effective interactions between police and community behavioral health services. The focus is on law enforcement personnel determining to avoid booking persons who appear to have mental disorders. (2) Post-booking diversion programs screen individuals potentially eligible for diversion for the presence of mental illness and evaluate their eligibility for diversion and negotiate with prosecutors, defense attorneys, mental health providers and the courts to produce a disposition outside the jail. The post-booking programs may include pre- and post-arraignment intervention. (3) Mixed programs involve some combination of both programs described above.

The Department of Health indicates it would first target the services in HB151 in Chaves, San Miguel, Taos, Santa Fe, Rio Arriba, Otero and San Juan counties. Secondly, it would target services towards McKinley, Curry, Sandoval, Grant, Hidalgo and Luna counties.

RAE/njw