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FISCAL IMPACT REPORT

SPONSOR: Snyder DATE TYPED: 3/16/03 HB _____
 SHORT TITLE: Drug Court Fees SB 91/aSPAC/aSFC/aSJC
 ANALYST: Hayes/Baca

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	\$0.1			Recurring	Drug Court Fund
	\$0.1			Recurring	Magistrate Drug Court Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB90 and SB92
 Relates to Appropriation in the General Appropriation Act

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$0.1	\$0.1	Recurring	Drug Court Fund
	\$0.1	\$0.1	Recurring	Magistrate Drug Court Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From

Administrative Office of the Courts (AOC)

Review of Drug Court Programs, September 16, 2002, Report to the Legislative Finance Committee

Highway and Transportation Department, Traffic Safety Bureau

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments strike Section 4, MAGISTRATE COSTS—SCHEDULE—DEFINITION OF “CONVICTED;” and Section 5, MAGISTRATE ADMINISTRATION – MONTHLY REMITTANCES; and insert the following:

“Section 3. (NEW MATERIAL) MAGISTRATE COURT - - DRUG COURT FEE
- - MONTHLY REMITTANCES. - -

- A. A magistrate court that has an adult drug court program may assess and collect from participants a “drug court fee” of fifty (\$50.00) a month. Program fee requirements may be satisfied by community service at the federal minimum wage. Proceeds from the drug court fee shall be deposited in the magistrate in the magistrate drug court fund.
- B. Each magistrate court shall pay monthly to the administrative office of the courts, not later than the date established by rule of the director of the administrative office, the amount collected pursuant to Subsection A of the section, which shall be credited to the magistrate drug court fund. The administrative office shall return to each magistrate a written receipt itemizing all money received and credited to the fund.

All succeeding sections are to be renumbered accordingly.

Synopsis of SFC Amendment

The Senate Finance Committee amendments make the following changes:

1. Eliminates the creation of a Metropolitan Drug Court Fund. Therefore, the bill now only applies to district courts and magistrate courts. The “drug court fee” is now established at \$50 a month, and the bill provides that the “fee requirements may be satisfied by community service at the federal minimum wage.” These fee provisions apply to the “drug court fee” for both a district court and magistrate court.
2. Strikes the Senate Public Affairs Committee amendment that requires the drug court assessment of fees, or waiver of fees, be consistent with standards approved by the Supreme Court.
3. Strikes the Senate Public Affairs Committee amendment in reference the Metropolitan Drug Court Fund to require DFA vouchers for expenditures be signed by the Court Administrator since the bill now appears to only apply only to magistrate courts and no longer includes metropolitan courts. (See Technical Issues below)

Pursuant to the Senate Finance Committee amendments a district court or a magistrate court that has an adult drug court program may assess and collect a drug court fee of fifty dollars (\$50.00) a month. Program fee requirements may be satisfied by community service at the federal minimum wage level. The AOC indicates that if a court chooses to charge a fee, the fee will be charged to every participant. However, the community service provision is to provide for those indigent participants. These changes address the issue of the standardization of drug court policies that was discussed in the original bill as well as the issues regarding the amount of fees charged by each drug court.

Technical Issues

On page 7, line 17 and 18, language remains regarding the “metropolitan drug court fund, and on page 5, line 3, language remains regarding “metropolitan court”. Should these references to met-

ropolitan court be removed?

Synopsis of SPAC Amendment

One of the Senate Public Affairs Committee amendments clarifies that if drug court chooses to assess a program fee on a sliding scale, or waive all or a portion of the fee for the participant, those actions must be consistent with standards approved by the Supreme Court.

The other three amendments by SPAC change the person authorized to sign DFA vouchers for expenditures from the drug court program coordinator to the Court Administrator. This change addresses the issue discussed in the original bill with regard to signature authorization for expending fees. This amendment provides greater oversight by requiring the vouchers to be signed by the court administrator.

Synopsis of Original Bill

Senate Bill 91 creates a drug court fund for district courts for fees collected from adult drug court participants and establishes a similar metropolitan drug court fund and a magistrate drug court fund. The drug court fees collected from participants will be deposited into these funds. Each court shall administer money in the funds to offset client service costs of the drug court program, consistent with the standards approved by the Supreme Court.

Significant Issues

- 1. LFC Audit of Drug Courts.** This legislation is a result of an LFC audit of drug courts completed in September, 2002. Because of the irregularity of fee collection activity, LFC's audit staff conducted a review of drug courts. For several years, various courts have been collecting fees from drug court participants even though the courts have no statutory authority to collect such fees. In 2001, when LFC learned about the fee collection, LFC informed the courts they should not be collecting fees. However, the drug courts persisted. Fees imposed by courts have ranged from \$8.00 to \$425.00 per participant. Thousands of dollars collected in fees have been used to buy clothes and shoes for drug court staff, and to pay for parking, computers, palm pilots, trips, food, hotels, cameras, belt buckles, wall art, etc. These purchases were not processed through DFA as required and did not follow the state's Procurement Code. (A copy of the LFC audit is available from the Legislative Finance Committee staff upon request.) DFA eventually required the courts to deposit their fee balances into the general fund.
- 2. Use of Fees.** While various findings were outlined in the audit, LFC specifically stated that if legislation was proposed allowing fees to be collected in the future, such legislation must specifically address what goods and services may be purchased with the fees. For example, it was suggested that fees be used to offset contract treatment costs. This bill provides that the money in the funds be used to offset client service costs consistent with standards approved by the Supreme Court. The Supreme Court is currently in the process of finalizing those standards. Included in the definition of "client service costs" are those costs associated with client needs such as treatment and transportation. The language is crafted to provide flexibility in the use of funds in order to provide for client needs.
- 3. Standardization of Drug Court Policies.** Another recommendation by the LFC auditors

and committee members was to adopt unified policies and procedures to apply to all drug courts statewide, including policies regarding fee collection. Although a Drug Court Advisory Committee drafted drug court standards, LFC auditors report it does not adequately address the audit recommendations. In fact, the drug court standards and SB91 state that each court can develop its own fee policy and submit it to the AOC. This will not contribute to the standardization needs addressed by the LFC auditors.

4. **Amount of Fee.** According to the draft drug courts standards and SB91, a court may assess and collect fees “of not more than \$160.00 per month, plus the drug court “may choose to assess the fee on a sliding scale” or it “may waive all or a portion of the fee.” If each court may assess fees as it chooses, this does not recognize the needs for standardization or uniformity of policy in accordance with LFC audit recommendations.
5. **Signature Authorization for Expending Fees.** At the last meeting of the Judicial System Study Committee held on November 18, 2002, the committee sponsoring this bill, members agreed on requiring that the Court Administrator at each court should be responsible for overseeing drug court expenditures, not the drug court program director. Many of the fiscal problems outlined in LFC’s audit were a direct result of program directors not following state accounting and procurement policies. Program directors should manage drug court activity. It is the responsibility of the court administrator together with the court’s fiscal director, to handle drug court financial matters in the same manner they handle funding for CASA, mediation programs, domestic violence programs, grade court, teen court and all other court activity. It is unclear why this legislation directs responsibility of fund management to drug court program directors.
6. **Bernalillo County Metropolitan Court (BCMC).** BCMC has had statutory authority to collect fees for several years; it is the only court who currently has such authority. BCMC applies the revenue toward the cost of its monthly treatment services. LFC auditors suggested other courts form similar practices.

FISCAL IMPLICATIONS

SB91 allows drug courts at the district, metropolitan and magistrate level to collect fees from participants. Fees will be deposited into a non-reverting fund established for each court. Any unexpended balances remaining at the end of a fiscal year shall not revert to the general fund.

- Since there is no criteria or uniformity for collection of fees, revenue estimates can not be made regarding the amount of potential revenue that each court could collect. (\$0.1 on the Appropriation and Revenue tables on page 1 means the amounts are “unknown.”)
- Since there is no criteria or uniformity for collection of fees, the potential for inequity among participants is very real. Will courts now be in the position of determining “ability to pay?” Another problem is that a court in southern New Mexico may decide to charge its drug court participants \$25 per month, whereas a court in northern New Mexico may charge participants the full \$160.00. Such an “open” range of fee assessment leaves too much discretion and the possibility of inequitable treatment among drug court participants. A more uniform fee structure needs to be developed in order to avert these issues and to provide valid revenue projections.
- If this legislation is adopted, it is suggested that the general fund portion of each drug

court be reduced by the amount of fees collected.

Continuing Appropriations

This bill creates new funds and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly-created funds. Earmarking reduces the ability of the Legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

Some drug courts have not charged fees to drug court clients. Those who have charged fees were the courts who had problems and/or LFC audit findings. Clearly, stronger and more definitive fiscal policies need to be developed and implemented by the Drug Court Standards Committee if such fees are imposed to ensure accountability of taxpayer dollars---whether those taxpayer dollars are fees collected or funds appropriated to the courts. Moreover, chief judges and court administrators also need to take a stronger role in supervising drug court activities and provide appropriate oversight.

RELATIONSHIP

Senate Bill 90 and 92 both appropriate additional funds to drug court, either to expand current drug court operations, to replace federal funds or to start up new drug courts. The issues outlined above are still applicable.

TECHNICAL ISSUES

“MAKING APPROPRIATIONS.” It is unclear whether the language in the bill specifically appropriates fee revenue to the courts upon collection. This language needs to be clarified. In their FY04 budget submissions, the courts did not estimate fee revenue in anticipation of this legislation nor did they budget potential revenue in “Other Program Revenue” so that such fees could be spent in FY04.

CMH/lb:sb:yr