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## FISCAL IMPACT REPORT

SPONSOR: Aragon DATE TYPED: 3/17/03 HB \_\_\_\_\_

SHORT TITLE: Substance Abuse & Crime Prevention Act SB 365/aSFL #1

ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$3,500.0	See Narrative	

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
 Department of Health (DOH)  
 Health Policy Commission (HPC)  
 Office of the Attorney General (AG)  
 Public Defender Department  
 Administrative Office of the Courts (AOC)  
 NM Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Senate Floor Amendment # 1

The Senate Floor Amendment # 1 changes the language in the bill to require a referral to an appropriate substance abuse treatment program as condition of probation. The change follows the intent of the legislation.

#### Synopsis of Original Bill

Senate Bill SB 365 requires the Department of Health to study the need for funding in order to provide adequate capacity for behavioral health treatment, and to produce a plan for such an increase in capacity.

In addition, SB 365 mandates substance abuse treatment rather than incarceration for nonviolent offenders who violate the Controlled Substances Act. SB 365 makes provision for expunging the

record of controlled substances convictions under certain circumstances. The courts would be allowed discretion on sentencing in certain specific situations.

### Significant Issues

DOH stated that for nonviolent offenses against the Controlled Substances Act, sentencing does not generally focus on providing treatment for addictions. Persons whose offenses were directly due to addiction constitute a significant burden of the criminal justice system, at great financial cost. Enacting SB 365 would ensure that first or second offense non-violent drug offenders would receive treatment instead of incarceration. There is national support for diversion to treatment or community services for offenders of controlled substance laws. Creating a process to get drug offenders into treatment rather than prison would have a beneficial overall impact to the State.

The Act repeals Section 30-31-28 NMSA, currently controlling conditional discharge for possession as first offense. Sections (A) through (D) of that section are closely related to Sections 5(A) through (D) of the Act, yet the Act provides some significant changes to the material. Section 30-31-28(A) provides for probation but, unlike the Act, does not include referral to an appropriate substance abuse treatment program as conditions of probation. Section 30-31-28(C) states that discharge and dismissal can occur only once with respect to any person, whereas the Act eliminates this restriction. Unlike Section 5(E) of the Act, Section 30-31-28 does not provide conditions under which a court may elect not to refer an offender under Section 30-31-28 to probation.

### **FISCAL IMPLICATIONS**

There is no appropriation included in SB 365 and there could be significant costs. Behavioral Health Services Division (BHSD), the Department of Finance and Administration (DFA), and county/ municipal government's substance abuse treatment costs could greatly increase. An increase of just 500 clients served for 30 days in residential treatment would cost a minimum of \$1.5 million. 1000 clients served for 60 days in outpatient would cost an additional \$2 million. In order to increase the treatment options proposed in SB 365, approximately \$3.5 million annual increase to BHSD's existing budget would be necessary.

It is estimated that of the annual 4,000 multiple offenders, 1,500 would be served by BHSD and the remaining 2,500 would be served via DFA and county/municipality funding. The *Behavioral Health Needs and Gaps in New Mexico* has identified that multi-systemic substance abuse funding provided for New Mexico is \$32,000,000 (\$14,000,000 of this is DOH), while the ideal expenditure would be \$169,000,000 for an ideal system of care.

The Public Defender noted that funds must be appropriated if the objective of the Bill is to be fulfilled.

### **ADMINISTRATIVE IMPLICATIONS**

DOH is mandated to review and assess substance abuse treatment funding, and provide to the Legislative Finance Committee a report regarding its review of substance abuse treatment funding. Financial reviews are conducted on a regular basis by the DOH. Plans for increasing treatment capacity would be based on the Gap Analysis, as will recommendations to the Legislature.

Public Health Division may contribute to the study and plan required by SB 365, which would entail some additional investment of time by PHD personnel but could be done with current staff.

## **TECHNICAL ISSUES**

Section 5, E (2) states that the court may elect not to refer to probation or treatment if “the offender has been sentenced to a term of incarceration...” It is not clear to DOH how this provision relates to the remainder of the sentencing provisions of SB365, which stipulated that the court would *sentence* the offender to incarceration.

AOC points out that Section 5(D) of the Act refers to nonpublic records filed with the attorney general as records that will not be expunged. Section 5(C) replaces Section 30-331-28(C) NMSA but whereas the current statutory section provides that the AG shall retain a nonpublic record, Section 5(C) makes no mention of such record. Thus, the reference to the nonpublic records in Section 5(D) of the Act does not track other provisions of the Act. It is also not clear to the AG how such records would be retained under this bill

Although Section 5 of the bill is titled “Conditional Discharge--Treatment Required,” the body of Section 5 states, “The conditions of probation may include a referral to an appropriate substance abuse treatment program.” According to the New Mexico Corrections Department, the body of the bill does not support the notion that the reason this conditional discharge statute is supposedly different than the existing statute is because substance abuse treatment would now be required.

## **OTHER SUBSTANTIVE ISSUES**

SB 365 would require the courts to use treatment rather than incarceration for persons convicted of nonviolent crimes violating the Controlled Substances Act. From DOH point of view, effective treatment programs are superior to criminal sanctions as a means of preventing recidivism. Persons with drug or alcohol abuse or dependence (addiction) have a psychiatric disorder that is not effectively treated by incarceration. As long as their disorder has not been effectively treated, it is unrealistic to expect them to cease violating drug laws. There are effective outpatient treatment methods; moreover, these are significantly less expensive than imprisonment. In addition, drug addiction leads to property crimes, such as shoplifting, due to addicts seeking money to obtain drugs. Effective treatment would have the benefit of preventing a significant percentage of such property crimes. It may also improve offenders’ ability to function as productive members of society.

As shown in the July 15, 2002 report entitled “Behavioral Health Needs and Gaps in New Mexico”, there are very substantial gaps between the need for treatment and the capacity to provide it. SB 365 would address this problem by producing a plan for increasing the capacity of treatment programs.

SB 365 would allow the court discretion not to refer an offender to probation or substance abuse treatment if the offender has committed certain crimes (Section 5, paragraph E). DOH suggests removing certain offenses from this paragraph. The department states that this might include driving under the influence, and certain nonviolent property crimes such as shoplifting, if they occur in the context of substance dependence (addiction). The rationale would be that, in such

cases, treating the underlying addiction as the most effective way to prevent recidivism. It would be helpful to require that a study and a plan incorporate what is known about effective treatment methods, and specify these, rather than focusing on capacity alone.

The Public Defender supports Drug Courts (indeed, any alternative sentencing for nonviolent offenders) as an effective and cost efficient alternative sentencing that combats recidivism. Many of the Department's clients have substance abuse issues. Without Drug Courts, sentencing authorities (judges) are faced with either punitive measures, or, for those who merit probation, an inability to monitor rehabilitative progress. The long-term solution for those who have substance abuse issues cannot be addressed by simple incarceration, just as addiction cannot be cured by a stern probationary lecture from the Bench. Drug Courts enable the Judge to maintain the offender under the jurisdiction of the Court and to insure rehabilitation is more than just a vague hope.

### **AMENDMENTS**

Certain offenses might be removed from Section 5, paragraph: driving under the influence, and certain nonviolent property crimes such as shoplifting, if they occur in the context of substance dependence (addiction).

SB 365 could be strengthened by specifying that the study required of the Department of Health must address the question of which treatment methods are known to be effective, and making recommendations on that basis.

Add language in Section 5(C) regarding nonpublic records kept by the AG or remove the language referring to nonpublic records in Section 5(D).

**BD/njw:yr**