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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/2006

SPONSOR Martinez LAST UPDATED 2/12/06 HB 541/aHJC

SHORT TITLE Crime of Escape from Treatment Facility SB _____

ANALYST McOlash/Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Corrections Department (CD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment:

- clarifies that the bill applies only to a person lawfully committed for a criminal offense;
- provides that escape from a secure residential treatment facility does not include attempting to escape from the facility; and
- provides that whoever commits escape from a secure residential treatment facility is guilty of a misdemeanor, regardless of the charge for which the person was committed.

Synopsis of Original Bill

House Bill 541 creates the crime of “Escape from a Secure Residential Treatment Facility.” The crime consists of a person lawfully committed to a secure residential treatment facility escaping or attempting to escape from the facility.

The bill defines “secure residential treatment facility” as a secure facility, not located within a correctional facility or detention center, in which residents are being treated for substance abuse problems, and personnel and physical barriers prevent the residents from leaving.

The Act provides the following penalties:

- Misdemeanor, if the person was committed to the facility as a result of a misdemeanor charge
- Fourth degree felony, if the person was committed to the facility because of a felony charge

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

AODA

House Bill 541 only specifies misdemeanor crimes and above in this proposal. If the intent was to apply to all people who escape from a secure treatment center, it would be necessary to add petty misdemeanor. Many juveniles are being sent to treatment facilities with only petty misdemeanors as the underlying crimes.

Escape from jail is a felony no matter what level crime of the underlying sentence. This proposed legislation creates a differentiation for the level of the underlying crime between treatment facilities and jails. House Bill 541 makes it the same degree crime “to attempt” and “to succeed” in committing a particular crime. This is not in parity with any other existing law and there should be a difference in the level of these crimes. For example, escaping from jail is a felony. An unsuccessful attempt to escape is a misdemeanor. Attempting to commit a crime makes it one degree lower than if the crime is completed.

The definition of a secure residential treatment facility is unclear as written. It appears that the intent was to make “escape” a crime even from facilities that allow work release. In reality, most facilities are not secure in the sense that is being implied (e.g., someone crawling through an air duct to escape). Most facilities are lock down in the sense that one is not supposed to leave and the staff will try to prevent your leaving to some degree. However, you are not locked in a cell. The doors to the facility are not locked and the windows are not barred.

There are only a small handful of residential treatment facilities in New Mexico that are actually secure. The state mental hospital being one of the secure facilities. It would be more reasonable to make this entire law reflective of its actual title: Crime of Escape from Treatment Facility. Deleting the references to the word “secure” would change the intent.

A “residential treatment facility” would be a facility, not located within a correctional facility or detention center, in which residents are being treated for substance abuse and/or mental health-related problems. The person would need administrative, personnel, probation or court approval to leave. This new definition would include substance abuse treatment centers and all residential treatment centers where a person may be ordered by the court.

People are generally not committed to residential treatment facilities. Rather, they are ordered by the court to enter and successfully complete a particular residential treatment program as part of

probation. This bill could provide the legal system with greater power to make sure people are completing their treatment programs.

OTHER SUBSTANTIVE ISSUES

Because clients at secure treatment facilities are usually on probation, enforcement of this law may fall into the hands of probation officers. There would be additional costs associated with the higher level of supervision by probation officers.

Passage of this bill may increase the liability of treatment providers and increase the cost of insurance. If this happens, Corrections and other agencies that deal with secure treatment providers may be forced to negotiate new contracts. However, the added expense is expected to be negligible.

AMENDMENTS

On page 1, line 18, after committed, strike “to a secure” and strike lines 19 and 20. Insert thereof: to or ordered by the court to enter and successfully complete a residential treatment facility escaping from the facility.

In Section 1.C, for clarity, insert commas on page 2, line, after “secure facility” and page 2, line 4 after “detention center” to avoid confusion within the definition as to what constitutes a secure facility.

POSSIBLE QUESTIONS

Why are we making the differentiation in this law (escape from a treatment facility) and not in escape from jail?

Should it be a felony to escape from a secure treatment center and a misdemeanor to attempt to escape?