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FISCAL IMPACT REPORT

ORIGINAL DATE 2/25/2007

SPONSOR Lujan, B LAST UPDATED _____ HB 1183

SHORT TITLE Sex Offender HIV Testing SB _____

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 1183 amends Section 24-2B-5.2 NMSA 1978 to provide that in the event that informed or substituted consent to perform an HIV test cannot be obtained pursuant to Sections 24-2B-2 and 24-2B-3 NMSA 1978, the district attorney (DA) or other prosecutorial authority must, upon the request of a victim of an alleged criminal offense described in the statute, petition the court to order that a test be performed on the alleged offender within 48 hours of the filing of an indictment or information alleging the offense.

Section 24-2B-5.2 provides that the same test must first be performed on the victim of the alleged offense. This Bill provides that if the victim is a minor or incompetent, the parent of legal guardian of the victim may request that a test be performed on the alleged offender.

SIGNIFICANT ISSUES

House Bill 1183 removes the ability of a victim to personally petition the court for an order for HIV testing of an alleged offender, and requires the victim or victim's parent or legal guardian to request the DA or other prosecutorial authority to petition the court for such an order.

Currently, Section 24-2B-5.2 NMSA 1978 requires that a court-ordered test be administered to the alleged offender within 10 days after the petition for a court-ordered test is filed, as opposed to the test being administered within 48 hours of the filing of charges as required in HB 1183.

TECHNICAL ISSUES

The DOH indicates that in Subsection C (Section 24-2B-5 NMSA 1978 Laws 1996, Chapter 80, Section 8) of the existing law it states "the hearing shall be conducted within seventy-two hours after the victim of the alleged criminal offense petitions the court for the order". Therefore, it is possible that the court hearing could delay the HIV testing of the alleged offender beyond the forty-eight hour period defined by HB1183.

OTHER SUBSTANTIVE ISSUES

The DOH indicates that HIV and other sexually transmitted diseases (STDs) can be transmitted as the result of a sexual assault. The victim of a sexual assault can be given treatments that will prevent STDs in case the victim was exposed to these infections as a result of the assault. In order to be effective in preventing transmission of STDs, these treatments must be given within a short period of time following the assault.

In the case of HIV, treatments given in order to decrease the risk of transmission ("HIV post-exposure prophylaxis", or HIV-PEP) are most effective when started within hours of exposure, and are probably not at all effective if started later than 72 hours following an exposure. When a person is known to have been exposed to HIV, HIV medications are given to the exposed individual for a total of 28 days. In the case where the HIV status of the exposure is not known, it is advisable to begin HIV-PEP as soon as possible while the HIV status of the source individual (the person who may have transmitted the infection) is being determined. If the source individual is tested and found to be HIV positive, then the HIV-PEP for the exposed individual will be continued for a full 28 days. If the source individual is tested and found to be HIV negative, then the HIV-PEP on the exposed individual can be stopped at that time. HIV medications used as HIV-PEP can have significant side effects. Therefore, it is important to determine the HIV status of the source individual so that the HIV-PEP for the exposed individual can be discontinued as soon as possible.

The provisions propose by this Bill would potentially facilitate HIV testing of an alleged offender by:

- clearly defining the responsibility for petitioning the court as lying with the district attorney or other prosecutorial authority; and,
- stating that the test must be performed on the alleged offender within forty-eight hours of filing of an indictment or information alleging the offense.