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FISCAL IMPACT REPORT

ORIGINAL DATE 2-10-2007

SPONSOR Carraro LAST UPDATED _____ HB _____

SHORT TITLE Sexual Predator Civil Commitment Act SB 452

ANALYST Geisler

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$11,500.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB906/HB794, SB932, SB 464, SB 450, SB439, SB 528/HB579, HB 476 & HB 769

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender

Department of Health (DOH)

Corrections Department (CD)

SUMMARY

Synopsis of Bill

Senate Bill 452 appropriates \$11,500,000 from the general fund and enacts the Sexual Predator Civil Commitment Act, a separate act from the laws pertaining to the Sex Offender Registration and Notification Act and the Sexual Offender Management Board. This bill seeks to define certain sexual predators as violent and place such individuals under civil commitment within the State. The court imposed civil commitment would permit long-term control, care, and treatment of sexually violent predators.

The bill provides for the commitment and treatment of sexually violent predators by: (1) creating new processes to identify potentially sexually violent predators (based on mental abnormality or personality disorder and a list of qualifying offenses; (2) referring those potentially sexually violent predators to a committee for review and evaluation; (3) creating new legal proceedings and processes for determining if a potential predator is, in fact, a violent sexual predator; and (4) instituting involuntary and indefinite long-term commitment of persons determined to be violent

sexual predators. The legal processes identified and included in SB 452 include jury trials, proof beyond a reasonable doubt, and unanimous verdicts with regard to certain issues, and requires courts to determine mental health status and propensity for sexual violence.

Other state agencies would be involved in enforcing the law including a multi-disciplinary team, the Sex Offender Management Board, the Secretary of Corrections and the Attorney General. Following certain procedures, a petition for commitment would be filed and the district court would determine if a person is a sexually violent predator. Annual review and certain procedures for release are included in the proposal.

FISCAL IMPLICATIONS

Senate Bill 452 appropriates \$11,000,000 to the Department of Health, \$150,000 to the Attorney General, \$150,000 to the Public Defender Department, and \$200,000 to the Administrative Offices of the Courts from the General Fund to carry out the Sexual Predator Civil Commitment Act in fiscal year 2008. The appropriation of \$11,500,000 contained in this bill is a recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of FY08 shall revert to the general fund.

DOH notes that many states that have enacted Sexual Predator Civil Commitment Act have experienced extraordinary financial burdens, including inadequate financial support to carry out the purpose of the acts. A full understanding of fiscal implications would require evaluation of existing housing and treatment resources and an accurate estimation of the number of potential predators and sexually violent predators that would be identified by this bill.

Corrections notes that operation of a new secure treatment facility by DOH (or by contract with Corrections) would likely require additional security personnel and treatment staff. DOH would need to study all cost factors involved to determine if the \$11 million appropriation identified in SB 452 would be sufficient to provide an appropriate facility or facilities and operating budget. Treatment costs (and SB 452 requires an elaborate treatment and evaluation process) would be at the high range for inpatient mental health treatment. For comparison purposes, the contract/private prison annual cost of incarcerating an inmate is \$23,867 per year for males and the cost per client to house a female inmate at a privately operated facility is \$21,651 per year. For probation and parole, the cost per client for a standard supervision program is \$1,467 per year and the cost per client in intensive supervision programs is \$3,383 per year.

AOC notes the fiscal impact on the judiciary would be proportional to the enforcement of this Act and commenced proceedings/hearings/trials related to the determination of probable cause and/or whether the potential predator is a sexually violent predator. 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

AOC

There may be a constitutional issue with regard to cruel and unusual punishment. Under the Act, a person might have completed his sentence but can continue to be confined. Confinement could continue indefinitely. A *“Research Overview: Sex Offender Treatment Approaches and*

Programs” prepared for the New Mexico Sentencing Commission states that, in addition to supervision and registration programs, several states have passed civil commitment statutes as a way to manage their sex offender populations. It is anticipated that the amount of funds needed to handle the growing population of civilly committed persons would be expected to double in the next five years.

Corrections

It is unclear how this type of commitment can be considered a civil commitment. The procedure outlined is the same procedure for a criminal trial. The rules of evidence as applicable to a criminal trial apply. The offender is afforded all the rights available to defendants at a criminal trial and the standard of proof is beyond a reasonable doubt, which is the same standard as for a criminal trial. Then after the trial, the person is at least potentially housed at the Department of Corrections. What separates this from a criminal trial is that the defendant is on trial for what they might do, not for what they have done.

The inclusion of the Children’s Youth and Families Department (CYFD) as an “agency with jurisdiction” seems to imply that children maybe locked up for the rest of their lives if they are found to be covered by this act. The inclusion of the DOH as an “agency with jurisdiction” seems to indicate that a person who has never been convicted of a crime maybe incarcerated for the rest of their life if they are found to be covered by this act.

This bill probably will be challenged as being unconstitutional double jeopardy. The probability of this challenge succeeding is enhanced by the fact that a person found to be subject to this law is subject to multiple trials before they are released. The provision of this bill applying it to anyone convicted of one of the enumerated offenses, even if the conviction occurred prior to the passage of this bill, probably will be found to violate the ex post facto clause of the United States and New Mexico Constitutions. The indeterminate nature of the commitment is also like to be found in violation of the New Mexico Constitution.

TECHNICAL ISSUES

DOH notes that SB 452 identifies individuals who have committed defined sexually violent offenses and who suffer from “mental abnormality” and/or “personality disorder” as sexually violent predators. Clinical criterion for determining these conditions are not identified in the bill. SB 452 provides for a review of potential predators by a multidisciplinary team. The composition and professional qualifications of members of such a team are not specified.

The public defender notes that the bill does not specifically provide for appellate court review of these commitment proceedings.

RELATIONSHIP

SB 452 relates to a number of other sex offender bills including SB 906/HB 974 sex offender monitoring pilot project, SB 932 lifetime sex offender parole supervision, SB 464 sex offenders near school boundaries, SB 450 sex offender definitions and registration, SB 439 additional sex offender crimes & penalties, SB 528/HB 578 criminal sexual penetration of children, HB 476 sex offender registration requirements and HB 769 certain stalkers as sex offenders.

