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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/11

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Commitment Petitions Filing SB 539

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
		*See Fiscal DOH				General Fund
		**See Fiscal AODA				General Fund/Fed Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Developmental Disabilities Planning Council (DDPC)
- Attorney General's Office (AGO)
- Human Services Department (HSD)
- Department of Health (DOH)
- Aging and Long-Term Services Department (ALTSD)
- Human Services Department (HSD)
- Administrative Office of the District Attorney (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 539 amends Section 43-1-11, within the Mental Health and Developmental Disabilities Code, to further address the commitment of adults to a mental health evaluation facility for 30 days. If the physician or evaluation facility decides that commitment of the client for additional evaluation and treatment *is in the best interest of the client*, a petition shall be filed within 5 days of admission. The physician or evaluation facility is deemed to act on behalf of the state and shall be represented by the district attorney of the county in which the facility is located.

FISCAL IMPLICATIONS

The table above reflects a net impact due to the increased duties for district attorneys, and the decreased duties for DOH attorneys. This may not be a resource neutral swap (see text below)

because the district attorney may prosecute fewer crimes due to these additional duties. However, the state may be gaining additional protection for patient's rights.

AODA notes that districts attorneys currently have the discretion to file or not file under 43-1-11. This removes that discretion and could lead to more filings, thus having an administrative and fiscal impact that cannot be determined at this time.

DOH has an evaluation facility in the Fourth Judicial District; the New Mexico Behavioral Health Institute (NMBHI). DOH attorneys represent NMBHI physicians and that facility in initial civil mental health commitments yearly. If SB 539 passed, NMBHI doctors will continue to be a party to initial commitments, but DOH attorneys will only be involved in extended commitments.

There may be an additional fiscal impact in broadening the considerations to include *best interest of the client* in terms of resources for further evaluations and treatments.

SIGNIFICANT ISSUES

DOH and HSD stated the following: SB 539 makes otherwise private facilities and physicians, state actors for the purposes of their assessments and work related to civil mental health commitments. Such a statutory scheme may create state liability for actions by actors outside the state's control and supervision.

PERFORMANCE IMPLICATIONS

SB 539 creates inconsistencies in civil mental health commitment processes in that it only addresses/amends processes for initial civil mental health commitments under 43-1-11 and not extended commitments under 43-1- 1.

ADMINISTRATIVE IMPLICATIONS

Additional staff may be needed in DA offices that have not been handling the involuntary commitment of adults.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 539 relates to:

HB 497 provides DOH and ALTSD, in lieu of the district attorney, with investigative powers and the power to petition for a civil mental health commitment hearing regarding an adult's involuntary commitment for evaluation and treatment.

HB 498 proposes to enact a plea and verdict of guilty but mentally ill.

HB 499 proposes to provide for civil commitment of individuals who are mentally ill and dangerous.

TECHNICAL ISSUES

There may be a conflict of interest if the service provider (evaluation) is also the petitioner.

The bill does not provide for a definition or clarification of *best interest of the client* nor does the definitions section of the Code.

ALTERNATIVES

DDPC states that DOH may not be involved in all of these cases if not all physicians or facilities petitioning are part of DOH. A possible solution is to direct an appropriation to the DDPC Office of Guardianship to pay for the petitioning attorney and the client's attorney. This is the current process for legal services for adult guardianship under the Probate Code. The Office of Guardianship has contracts with local attorneys for these services statewide.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The local district attorney will not be required to represent the physician or facility petitioning for civil commitment.

AHO/svb