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FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/19

SPONSOR Martinez/Cisneros LAST UPDATED _____ HB _____

SHORT TITLE Immunity for Overdose Assistance SB 282

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 New Mexico Corrections Department (NMCD)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Human Services Department (HSD)

SUMMARY

Synopsis of Bill

Senate Bill 282 would amend the Controlled Substances Act and add a new provision to the Liquor Control Act to expand the protections from criminal or other penal actions for those seeking medical assistance for themselves or another in an alcohol- or drug-related overdose. The bill includes alcohol-related overdoses in addition to drug-related overdoses under its protections.

The bill would prevent “Good Samaritans” from being penalized in various ways who may not otherwise report or attempt to obtain medical treatment for those experiencing overdoses. The bill also calls for protection from any type of civil forfeiture.

Specifically, the bill would expand the Overdose Prevention Immunity statute (Section 30-31-27.1 NMSA) to cover those persons seeking medical assistance for themselves and for those seeking medical assistance for someone else for an overdose of alcohol and to include immunity from arrest and any other penalties and civil forfeiture of property which might be incurred as a

result of seeking medical assistance, to include the violation of a restraining order or the violation of probation or parole. Under the bill, the act of seeking medical assistance for someone who is experiencing an alcohol or drug-related overdose may also be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act for which immunity is not provided in this section of the statute.

The bill defines seeking medical assistance as reporting an alcohol or drug-related overdose or other medical emergency to law enforcement, the 911 system or another emergency dispatch system, a poison control center or a health care provider, or assisting the individual who is reporting an alcohol or drug-related overdose or providing care to an individual who is experiencing an alcohol or drug-related overdose or other medical emergency while awaiting the arrival of a health care provider.

The bill would provide limited immunity to persons seeking medical assistance for themselves and for those seeking medical assistance for someone else for an overdose of alcohol and to include immunity from arrest, any other penalties and civil forfeiture of property which might be incurred as a result of seeking medical assistance, to specifically include the violation of a restraining order or the violation of probation or parole as well as violations of Section 60-7B-1 or 60-7B-9 NMSA which relate to selling or giving alcoholic beverages to minors and possession of alcoholic beverages by minors, and the associated criminal penalties. The act of seeking medical assistance for someone who is experiencing an alcohol or drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Liquor Control Act.

FISCAL IMPLICATIONS

NMCD, AOC and HSD would have certain administrative expenses associated with the implementation of the bill.

HSD indicates it provides harm reduction and naloxone “train-the-trainer” training to create a statewide training infrastructure, utilizing federal grant funding that is available through 2020. Under the provisions of the bill, that training could be modified to include the expanded target population and new immunity protections.

SIGNIFICANT ISSUES

The Corrections Department reports the bill would allow probationers and parolees under the supervision of the NMCD who seek medical assistances for their own overdoses of drugs or alcohol to avoid any penalty, such as a higher level of parole or probation supervision as determined and imposed by the offender’s probation and parole officer, incarceration and revocation for violating the terms of probation or parole which typically prohibit the use alcohol or drugs during supervision as well as the violation of any criminal laws, and incarceration for violating a restraining order if the evidence for these violations was gained as a result of the seeking of medical assistance.

There are times when probation and parole officers do gain evidence of supervision violations as a result of the probationer or parolee, or someone on his or her behalf, seeking medical assistance for an overdose. The offender cannot be adequately supervised if the officer is not allowed to utilize this acquired information to better supervise the offender and protect the public. The officer might place the offender into a higher level of supervision requiring more office and

home visits, more drug testing, or more counseling, etc. instead of seeking to have the sentencing judge or parole board revoke the offender's probation or parole. However, under this bill, such an effort to change the supervision level to more closely supervise the offender because of learning of overdose could be construed as a prohibited penalty.

The could, in some cases, enable offenders to engage in criminal and self-defeating behavior, to the detriment of public safety and to the offender's own rehabilitation and sobriety. Additionally, if the probation and parole officer learns that the probationer or parolee sought treatment for an overdose and he knows the offender has custody of young child, he may need to ensure the safety of the child by involving child protective services or taking other appropriate action. If this resulted in the offender losing custody of his child because it was determined he was not a suitable parent for the child, this bill could be construed to prevent the other agency from removing the child, even temporarily, for legitimate and reasonable safety concerns.

The Department of Health reports drug overdose caused nearly 500 deaths per year from 2015 through 2017 in New Mexico. Alcohol is a factor in approximately 20 percent of the drug overdose causes in New Mexico. Although New Mexico's national ranking for drug overdose deaths has fallen in recent years, the actual number of overdose deaths remains high and is a major public health concern. Expanding the provisions of New Mexico's "Good Samaritan" law will increase the likelihood that those overdosing or witnessing an overdose will seek medical assistance in a timely fashion, which has the potential to reduce the number of New Mexico overdoses from becoming alcohol or drug overdose deaths.

PERFORMANCE IMPLICATIONS

HSD would expand its data collection on trainings to include the expanded target population and immunity protections.

ADMINISTRATIVE IMPLICATIONS

NMCD notes the bill could substantially hinder the department in parole or probation supervision of offenders as well as unduly impede the authority of the sentencing judge in the case of probation and the Parole Board in the case of parole to take revocation or other action either deemed appropriate.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB282 relates to HB298 which would remove the funding availability contingency for requirements to provide opioid overdose education and naloxone kits. The Behavioral Health Services Division of HSD currently provides opioid overdose training and kits to at-risk populations using federal grant funding.

TECHNICAL ISSUES

NMAG suggests remove references to an alcohol related overdose in Section 1, and removing reference to a drug-related overdose in Section 2 so the immunity would apply to the substance at issue in the statutes affected by Section 1 and 2. This would not create a conflict as both sections, if amended, would apply simultaneously.

NMAG notes the bill seeks to provide broad protections for those experiencing or assisting with overdoses; however, the bill does not provide immunity for violations of conditions of release, which seems at odds with its purpose of encouraging persons to seek or give aid to those experiencing overdoses. The omission of this may lead to a potential conflict with the provision in SB282 that prohibits other penalties for those seeking medical aid in regards to an overdose.

AOC indicates the intent of the bill seems to be to reduce hesitation in contacting professional first responders in the event of overdose. Defining alcohol overdose could provide additional clarity and may help avoid confusion about how the bill aligns with DWI laws. Does the bill provide immunity if someone is driving while impaired to a hospital? Does immunity apply if an individual is severely intoxicated but not overdosing by medical standards? AOC suggests it may be clearer to add 60-7B-1 or 60-7B-9 to the first section under both A and B.

OTHER SUBSTANTIVE ISSUES

HSD indicates in 2007, New Mexico passed the “Good Samaritan” law which provides immunity when a person who is either experiencing or assisting someone with a drug-related overdose seeks medical attention. A continuing challenge has been the law does not provide immunity to individuals who are justice-involved and required to abstain from controlled substances and those who are using them. However, justice-involved individuals may still require medical assistance for overdose, but are afraid to seek medical attention for fear of violating their probation, parole, or restraining order. SB282 would provide for additional protections for this population. The Behavioral Health Services Division of HSD contracts to provide harm reduction and naloxone training, which includes information about requesting medical assistance in the case of drug overdose. That training could be modified to include these new protections and would be extended to include alcohol-related overdose to an expanded target population.

RAE/sb