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FISCAL IMPACT REPORT

SPONSOR Heaton ORIGINAL DATE 1-22-10
LAST UPDATED _____ HB 63
SHORT TITLE HIV Testing for Certain Crimes SB _____
ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Appropriation		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Health (DOH)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 63 amends the Human Immunodeficiency Virus (HIV) Test Act, Chapter 24-2B-5.1 and 5.2 of the Health & Safety statutes, relating to informed consent not being required of certain offenders or alleged offenders for HIV testing. The bill would no longer allow the victim, or victim's parent or legal guardian if a minor person, to petition the court, instead requiring the district attorney (DA) or other prosecutorial authority to act upon the request of the victim or a minor victim's parent or legal guardian. In addition, the test would be required to be performed no later than 48 hours from the date of the court order, instead of the 10 days after the petition's filing date as set forth in existing law. The petition and all proceedings in connection with the petition would continue to be sealed pursuant to current law. The bill would require the results of the test to be disclosed as soon as practicable.

HB 63 directs that the test may be performed on alleged offenders regardless of the results of the test performed, according to current law, on the victim of the alleged offense.

Finally, the bill would allow more than one follow-up test for alleged offenders.

SIGNIFICANT ISSUES

ADOA expressed concern that forty-eight hours is a very short turn-around time to administer the test once it is ordered. Making arrangements for testing of offenders who may not even be in custody, and getting the necessary medically-trained personnel lined up to perform the test within forty-eight hours may end up being a near-impossible task. This would be especially so if the order is entered on a Friday, and the test would have to be completed before the next working day (Monday).

According to AODA, still unaddressed in section 24-2B-5.2 is who is responsible for administering and paying for testing of those who are charged with a sexual assault, but are not yet convicted.

Department of Health explains that HB63 does not significantly change the substance of this existing provision of the New Mexico HIV Test Act except to assign the responsibility for petitioning the court to the district attorney. It is probably appropriate that the responsibility for petitioning the court under these circumstances should lie with the district attorney. HB63 also would require that the HIV test be administered within 48 hours of the court order, rather than 10 days as currently in law, which can benefit the victim by allowing Post-Exposure Prophylaxis (PEP) for HIV be to appropriately administered, depending upon test results.

ADMINISTRATIVE IMPLICATIONS

The Department of Health is responsible under existing law to provide HIV testing and counseling of charged or convicted offenders pursuant to court orders.

EO/mt