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FISCAL IMPACT REPORT

SPONSOR Maestas **ORIGINAL DATE** 01/28/10 178/aHJC/aHF1#1
LAST UPDATED 02/17/10 **HB** /aHF1#2

SHORT TITLE Substance Abuse & Crime Prevention Act **SB** _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See narrative			Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Human Services Department (HSD)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of HF1 Amendment #2

The House Floor Amendment #2 to House Bill 178 clarifies that the court may stay further proceedings with respect to a substance abuse assessment “after a hearing, with input from the state, and after the defendant signs...”; provides for court-ordered monitoring as an option after a substance abuse assessment; replaces the term “person/person’s” with the term “defendant/defendant’s” as used in the bill; and makes a technical change.

Synopsis of HF1 Amendment #1

The House Floor Amendment #1 to House Bill 178 strikes the HJC Amendment and provides that the court may, “after a hearing and after the defendant signs...” stay all further proceedings with respect to an assessment of a substance abuse treatment option; and further provides that “nothing...shall prohibit the district attorneys from maintaining their internal records and files.”

Synopsis of HJC Amendment

House Judiciary Committee Amendment provides that the court may, “after a hearing...” and with consent of the person, stay all further proceedings; the court may prescribe court ordered monitoring, if referring for substance abuse treatment; the court “may”, as opposed to shall, dismiss with prejudice proceedings against a person; and further provides that no person is eligible to participate more than twice in a treatment option pursuant to the act.

Synopsis of Original Bill

HB 178 would enact a new law entitled the Substance Abuse and Crime Prevention Act. Section 2; Defines "qualified treatment professional" and "substance abuse treatment program".

Section 3; (A) The court may refer a person charged with drug possession for a substance abuse assessment; the defendant must consent and sign a waiver of time limits to commence prosecution; the assessment must contain recommendations for a treatment plan; the treatment shall not exceed 18 months; and incarceration shall not be ordered as a condition of participation in the treatment program.

(B) If someone ordered to a treatment program violates the terms of their participation, the court may allow reinstatement of the criminal proceedings.

(C) Requires the court to dismiss with prejudice the charges if the person completes the treatment program; and allows the court to dismiss the proceedings prior to 18 months.

(D) Allows the person participating in a treatment plan to petition the court for an order sealing the record after the charges are dismissed; if the court determines that the charges were in fact dismissed, it "shall" enter an order sealing the records; and if the person is successful in having a sealing order entered, the person cannot subsequently be found guilty of perjury or giving a false statement by failing to acknowledge that they were charged with drug possession.

Section 4; if a person is charged with a probation or parole violation because of drug possession or use, the court or parole board may stay the proceedings and order an assessment and referral in accordance with section 3 above.

FISCAL IMPLICATIONS

There is no appropriation in the bill to help pay for the assessments and treatments. Some offenders may lack the resources to pay these assessment and treatment costs.

The bill could reduce the numbers and costs of possession convictions by diverting those offenders to treatment, and could reduce the prison population and probation/parole caseloads.

HSD reports that funds for other behavioral health services may need to be reduced in order to fund the substance abuse treatment, unless separate funding was available.

HSD further reports that in FY09, the cost of serving an adult in a substance abuse residential treatment facility averaged \$6,500; outpatient services averaged \$2,000.

The contract/private prison annual cost of incarcerating a male inmate is \$29,853 per year. The cost per client to house a female inmate at a privately operated facility is \$34,183 per year.

The cost per client in Probation and Parole for a standard supervision program is \$1,412 per year. The cost per client in Intensive Supervision programs is \$4,601 per year. The cost per client in Community Corrections is \$3,684 per year. The cost per client for male and female residential Community Corrections programs is \$24,775 per year.

SIGNIFICANT ISSUES

The proposed substance abuse and crime prevention act attempts to provide substance abuse treatment for persons charged with non-violent drug possession charges, in lieu of incarceration.

Prosecutors appear to be excluded from input into the disposition of a case once charges are brought.

The prescribed maximum treatment period of eighteen (18) months may exceed the jurisdiction of Metropolitan and magistrate courts for possession charges.

The dismissal provision makes no mention of whether dismissal is appropriate if the defendant is charged with any violation of the law during the pendency of treatment.

There are no standards or procedures set forth to guide a court in determining whether early dismissal of the proceedings is appropriate.

The sealing provisions raise issues about the appropriateness of mandatory sealing in all cases.

If the possession charge was for a felony, the state may be deprived of the use of a prior felony conviction for habitual offender enhancement purposes.

PERFORMANCE IMPLICATIONS

The provisions of existing law would not apply to someone entering a drug court.

The bill does not identify an entity to monitor compliance with the courts conditions.

ADMINISTRATIVE IMPLICATIONS

Behavioral health (mental health and substance abuse) responsibilities were transferred to the HSD, Behavioral Health Collaborative, in the 2007 session.

The bill may conflict with ongoing efforts of the drug courts in terms of therapeutic diversion.

OTHER SUBSTANTIVE ISSUES

More rural areas of the state may not have sufficient “qualified treatment professionals” and/or “substance abuse treatment programs”.

PDD notes that the department supports any legislation that seeks to decrease recidivism.

ALTERNATIVES

Expand the scope of drug courts, since they are showing some success.

QUESTIONS

How many times is an offender entitled to this treatment option under the act?

Are there any statistics that compare success rates for participants of treatment programs offered in prison as opposed to those offered outside of prison?

AMENDMENTS

HSD suggests specifying that Section 3(C) and 3(D) do not apply to persons charged with violating conditions of probation and parole.

AHO/mew:mt