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FISCAL IMPACT REPORT

SPONSOR Kintigh ORIGINAL DATE 02/28/11
LAST UPDATED _____ HB 497
SHORT TITLE Involuntary Commitment of Adults SB _____
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*See fiscal impact			Recurring	Local Governments & General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
Department of Health (DOH)
Aging and Long-Term Services Department (ALTSD)
Attorney General's Office (AGO)
Administrative Office of the District Attorneys (AODA)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 497 (HB 497) amends NMSA 1978 Section 43-1-11(G) the Mental Health and Developmental Disabilities Code to remove district attorney offices from involvement in civil mental health commitments unless related to a criminal case.

FISCAL IMPLICATIONS

*Any additional fiscal impact on the judiciary will be proportional to the number of times civil commitment petitions result from the investigations by DOH or ALTSD as opposed to the district attorney, as well as challenges to the authority of those agencies to conduct such investigations.

*DOH and ALTSD will incur costs to develop the infrastructure and staff to handle such investigations and petitioning for involuntary commitment.

SIGNIFICANT ISSUES

When an interested party who reasonably believes that an adult is suffering from a mental disorder and presents a likelihood of serious harm to the person's own self or to others, requests the investigating department (currently the district attorney, but pursuant to the changes DOH and ALTSD) to investigate and determine whether reasonable grounds exist to commit the person for a thirty-day period of evaluation and treatment, the investigating department must act on the request within 72 hours and petition the court for a commitment hearing if appropriate. The district attorney retains the authority to file a petition for commitment and appear on behalf of the state if the adult was a defendant in a criminal prosecution.

The statute as currently written requires the interested person seeking an investigation into the adult's mental health to file the request for an investigation with the district attorney, and it then becomes the responsibility of the district attorney to act on the request within 72 hours, and if the district attorney determines that reasonable grounds exists to commit the adult the district attorney may petition the court for a hearing.

Involuntary commitment is typically directed at people claimed or found to be suffering from a mental illness, and that the effect of this produces a risk to themselves or others. This decision requires a subjective opinion and is therefore open to error or abuse.

PERFORMANCE IMPLICATIONS

Although DOH and ALTSD may currently be consulted by district attorneys in some of these investigations, some federal patient confidentiality restrictions may apply more to these agencies than to investigations formally conducted under the auspices of law enforcement. Agency investigations may be challenged in court as too intrusive before the determination to file a civil commitment petition is even made. Some judicial districts have specialized mental health courts (First, Second and Third), but any district court can hear such a petition. Every judicial district is served by a local district attorney, but neither DOH nor ALTSD are represented in every district.

ADMINISTRATIVE IMPLICATIONS

HB 497 may create a conflict of interest for state health departments such as DOH or others who either license providers or provide direct services to persons who are committed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB497 relates to:

- HB498 - enacts the possibility of a plea and verdict of guilty but mentally ill; and
- HB499 - civil commitment of individuals who are mentally ill and dangerous to others.

OTHER SUBSTANTIVE ISSUES

Some individuals who oppose involuntary commitment claim it violates the Fifth Amendment in a number of ways, particularly its privilege against self-incrimination, as the psychiatrically examined individual may not be free to remain silent, and such silence may actually be used as "proof" of his "mental illness".

Although patients involuntarily committed theoretically have a legal right to refuse treatment, refusal to take medications or participate in other treatments is noted by hospital staff. Court reviews usually are heavily weighted toward the hospital staff, with the patient input during such hearings minimal.

TECHNICAL ISSUES

It is uncertain if anyone who suspects that someone has mental problems and needs help could file an application to DOH or ALTSD for a court-ordered evaluation under the statute.

ALTERNATIVES

Better training in behavioral health issues for district attorneys or require them to work more formally with mental health professionals to be better equipped to serve the State in this capacity.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The district attorney offices will continue to be involved in civil mental health commitments.

AHO/mew