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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11

SPONSOR Kintigh LAST UPDATED HB 499

SHORT TITLE Civil Commitment of Certain People 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	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

House Bill 499 amends Section 43-1-3 of the Mental Health and Developmental Disabilities Code (MHDDC) to add a definition of “secure treatment facility” and creates a process to civilly commit individuals who are mentally ill and dangerous. It sets out processes for the initial commitment, for subsequent commitments, for “privileges” during commitment, for provisional discharge, for discharge, and for appeals. It also creates an indeterminate civil commitment with a review process before discharge for individuals who have never been adjudicated of any crime.

More specifically, the new section 43-1-26 provides for the following:

- (A) Upon filing a petition alleging a person is mentally ill and a danger to others, the court shall hear the petition. After an evidentiary hearing, if the court finds that the person is mentally ill and dangerous to others, it shall commit the person to a secure treatment facility unless that person establishes by clear and convincing evidence that a less restrictive treatment program is available that meets their treatment needs and the requirements of public safety.
- (B) Once the person is committed to a secure treatment facility the committing court is required to hold a hearing to make a final determination as to whether the person shall remain committed.

(C) The secure treatment facility is allowed sixty days to produce a written treatment report after a person who is mentally ill and dangerous to others is committed. The committing court must hold a hearing to make a final determination as to whether the person shall remain committed within fourteen days of the court's receipt of the written treatment report or ninety days of the date of the initial commitment.

(D) If after a hearing a court finds that a person should be committed as a person who is mentally ill, but not as a person who is mentally ill and dangerous to others, the court may, after a hearing on the matter, commit the person to a treatment facility that is not a secure treatment facility.

(E) If a court finds that during the final determination a client continues to be a person who is mentally ill and dangerous to others, the court shall order the proposed client to be committed for an indeterminate period of time.

(F) A "pass plan" that delineates a person's liberties may or may not be available for a person who is mentally ill and dangerous to others and who is confined at a secure treatment facility.

(G) Describes situations that may preclude a person from being eligible for a "pass plan".

(H) Provides for a hearing before a special review board in the case of a person objecting to a person's eligibility for a "pass plan".

(I) DOH shall be responsible for establishing a special review board and providing for its membership. The special review board shall meet at least once every six months. It shall hear and consider all petitions for a reduction in custody or to appeal a revocation of provisional discharge.

(J) A person may not petition the special review board for a reduction in custody for six months following their final commitment proceedings, but a medical director from a secure treatment facility may file a petition for a reduction in custody or revocation of provisional discharge at any time.

(K) A special review board shall hold a hearing on each petition to review documentary evidence prior to making its recommendation.

(L) A victim of a crime for which the person was convicted must be given prompt notice of the filing of any petition.

(M) Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan or otherwise permanently or temporarily releasing a client committed from a secure treatment facility, the head of the secure treatment facility shall make a reasonable effort to notify any victim of a crime for which the client was convicted that the client may be discharged or released and that the victim has a right to submit a written statement regarding the decisions of the secure treatment facility, the special review board, or DOH in the matter.

(N) A person may be considered eligible for transfer out of a secure treatment facility.

(O) The "division" shall develop, implement and monitor a provisional discharge plan with the person, the secure treatment facility, and other appropriate persons.

(P) A provisional discharge shall not automatically terminate.

(Q) A provision discharge may be revoked.

(R) The revocation of a provisional discharge shall include a notice of intent to revoke a provisional discharge.

(S) Provides for the voluntary return or return by force of a client to a secure treatment facility after a provisional discharge has been revoked at the expense of the State.

(T) An appeal process for a person aggrieved by a revocation decision must be scheduled within thirty days.

(U) Provides for a return to a provisional discharge status.

(V) A client who is mentally ill and dangerous to others shall not be discharged unless it appears, after a hearing and a favorable recommendation by a special review board, that the client is

capable of making an acceptable adjustment to open society, is no longer dangerous to others and is no longer in need of inpatient treatment and supervision. If the desired conditions do not exist, the discharge shall not be granted.

Section 43-1-27 provides for a judicial appeal panel and describes its composition. The judicial appeal panel shall not consider petitions for relief other than those appealed from a decision that DOH has made. A party aggrieved by an order of the judicial appeal panel may appeal from the decision to the court of appeals.

FISCAL IMPLICATIONS

AOC reports that any additional fiscal impact on the judiciary would be proportional to the number of times civil commitment proceedings are brought under this new process as opposed to the current process. HB 499 provides in Section 43-1-27 that the “supreme court shall establish a judicial appeal panel composed of three judges and four alternate judges appointed from among the acting state judges,” and goes on to require an entirely new and separate appeal process for these cases. Initial set-up of this process will require additional resources, and thereafter additional fiscal impact on the judiciary will depend on the number of appeals filed under this new process than currently exists.

There is no appropriation in the bill to support the new statutory duties for DOH.

SIGNIFICANT ISSUES

HSD and DOH notes that HB 499 creates a civil commitment process to address both the ‘criminal commitment’ found at Sections 31-9-1.2 through 1.5 NMSA 1978 as well as the civil commitment found in the Mental Health and Developmental Disabilities Code. HB 499 is more restrictive than either and may subject the State to various constitutional challenges. The bill addresses both people in the criminal justice system and people who are not charged or adjudicated with any crime. Without reasonable treatment goals, commitments are unconstitutional deprivations of liberty and punitive in nature. HB 499 does not provide for a regular review process tied with any process for treatment planning.

HSD and DOH further note that HB 499 shifts the burden of proof to the mentally ill individual to prove by clear and convincing evidence that there are less restrictive alternatives available, that public safety will be met by any offered treatment alternatives, and that they need not be committed. Legal representation is not guaranteed under HB 499. The commitment process is opened in HB 499 to a number of “parties” who would be allowed access to confidential information that may or may not be currently available to them.

PERFORMANCE IMPLICATIONS

DOH notes that HB 499 does not recognize treatment guardians and other court appointed guardians in civil commitment processes.

ADMINISTRATIVE IMPLICATIONS

The complex provisions in the bill will likely require an increase in legal, clinical and administrative oversight resources in HSD, DOH and the New Mexico Corrections Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB499 relates to:

- HB498 - enact the possibility of a plea and verdict of guilty but mentally ill
- HB497 – DOH and ALTSD to investigate requests for civil commitment rather than local district attorneys

TECHNICAL ISSUES

HB 499 contains many terms that are not defined or are inconsistent with the current MHDDC, such as: health officer, psychopathic personality, dangerous, and institutionalization.

HB 499 refers to the “division” which may be intended as a reference to DOH, but may actually be a reference to HSD, Behavioral Health Services Division. It’s not clear which.

OTHER SUBSTANTIVE ISSUES

ALTSD notes that the success of implementing a “provisional discharge plan” is directly proportionate to the extent of behavioral health infrastructure which is insufficient to meet the demands of HB 499. Without more housing, psychiatry, medication, case management and guidelines for operating such services, there are inadequate resources to support HB 499 “discharge plans”.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The MHDDC and the criminal commitment provisions of 31-9-1.5 and 31-9-1.6 NMSA 1978 will continue to be used where commitment is warranted and less drastic means are not available.

AHO/bym