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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 03/02/11  
**LAST UPDATED** 03/02/11    **HB** \_\_\_\_\_

**SPONSOR** Martinez/Maestas

**SHORT TITLE** “Substance Abuse and Crime Prevention Act”    **SB** 321

**ANALYST** Esquibel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Unknown	Unknown		Recurring	General Fund; Other State Funds; Federal Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts

#### Responses Not Received From

Department of Public Safety

Regulation and Licensing Department

### SUMMARY

#### Synopsis of Bill

Senate Bill 321 enacts the “Substance Abuse and Crime Prevention Act” to provide substance abuse treatment for persons charged with certain substance abuse offenses.

Section 2: Defines “qualified treatment professional” to mean a person with specialized knowledge and training in the areas of psychology, psychiatry, or addiction therapy, and who has

the expertise to conduct an assessment necessary to recommend an appropriate treatment plan. It also defines “substance abuse treatment program” to mean a licensed or certified community substance abuse treatment program, including:

- Outpatient treatment programs
  - Halfway house treatment programs
  - Day treatment programs
  - Veterans treatment programs
  - Medication-assisted therapy programs
  - Drug education courses
  - Drug prevention courses
  - Limited inpatient treatment programs
  - Residential drug treatment programs
- but excluding drug treatment programs offered in prison or jail facilities.

Section 3: Specifies that (A) a misdemeanor or felony charge for a violation of Subsection A, B, C or D of Section 30-31-23 NMSA 1978 may lead, after a hearing with input from the state, including a written statement signed by the person waiving the time limits for commencement of trial pursuant to court rules, to a stay of further criminal proceedings and an assessment by a qualified treatment professional to determine the suitability and need for treatment, and recommendation of an appropriate treatment plan. Based on the assessment, the court may refer the person to a substance abuse treatment program, which may include court-ordered monitoring of the defendant. The period of treatment shall not exceed eighteen months and the court shall not order incarceration of the person as a condition of participation in the substance abuse program. The act also states that this subsection does not apply to a person entering a drug court program. (B) Upon violation of the terms and conditions of participation in the substance abuse program, the court may reinstate criminal proceedings against the person. (C) If the defendant successfully completes the program, the court shall dismiss with prejudice the proceedings against the person. (D) Upon dismissal, the person may apply to the court for an order to seal the records related to the person’s arrest, providing such order would be consistent with federal law. (E) A person whose records have been sealed shall not subsequently be found guilty of perjury for any failure to acknowledge a violation of Subsection A, B, C, or D of Section 30-31-23 NMSA 1978. (F) Nothing in this section prohibits the district attorneys from maintaining their internal records or from accessing the sealed court records.

Section 4: If a person is charged with a probation or parole violation for the possession or use of controlled substances, the court or parole board may stay the probation or parole revocation hearing and order an assessment and referral in accordance with Section 3 of this act.

Section 5: No one can participate more than twice in this Act’s substance abuse treatment option.

Section 6: Specifies the effective date of the act as July 1, 2011.

## **FISCAL IMPLICATIONS**

The Administrative Office of the Courts indicates hearings related to this Act have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The bill also has an unknown financial impact on substance abuse treatment centers around the state.

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.

In 2010, HSD reported 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.

In 2010, HSD further reported 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 Corrections Department reported in 2010 that 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 2010 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.

### **ADMINISTRATIVE IMPLICATIONS**

Hearings related to this Act have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **OTHER SUBSTANTIVE ISSUES**

The AOC indicates research strongly supports diverting non-violent drug offenders from jail and prison to evidence-based treatment. Many such offenders are repeat offenders and will continue to commit crimes in support of their substance abuse/addiction. Successful treatment is more cost-effective than prison in that it helps the affected individual change their substance abusing behavior, thereby avoiding further criminal system costs. The Judiciary's drug court programs recognize the benefits of such successful programs, but drug courts work best with high-risk / high-need offenders whose criminal history and treatment needs require the intensive supervision of such programs along with the extended treatment period necessary to a successful treatment intervention with this more difficult population.

SB321 would enable treatment intervention for appropriate offenders when the more intensive resources of a drug court program are not necessary, or where they may not be available. SB321 does not provide funding for this expanded use of the state's treatment services, and it is possible that the state, especially in more rural areas, will not have sufficient "qualified treatment professionals" and/or "substance abuse treatment programs" to fully support the implementation of this act.

RAE/mew:bym