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FISCAL IMPACT REPORT

	03/04/11		
	ORIGINAL DATE	03/17/11	
SPONSOR <u>Asbill</u>	LAST UPDATED	03/22/11	HB _____
			365/aSJC/aSFC/aSFL#1
SHORT TITLE <u>DNA Samples from Persons in Felony Arrests</u>			SB <u>/aSFL#2/aSJC/aCC</u>
			ANALYST <u>Segura/Soderquist</u>

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
\$218.0*	\$250.0*	\$250.0*	Recurring	NMDIS

(Parenthesis () Indicate Revenue Decreases)

*This funding is not sufficient to sustain the program in the long term. See Fiscal Implications

Relates to HB 256

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)

Attorney General's Office (AGO)

Public Defender Department (PDD)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Conference Committee Amendment

The identical House and Senate Conference Committee amendments to SB 365 disapprove all four Senate Judiciary Committee amendments and Senate Floor amendments numbers 1 and 2. The amendments approve Senate Finance Committee amendment number 1 and House Judiciary amendment number 1. The amendments also add language that any DNA sample taken shall not be analyzed and shall be destroyed unless the arrest was made on a felony arrest warrant, a finding of probable cause for the arrest by a judge, or the defendant posted bond or was released before a judge and then fails to appear for a scheduled hearing. Additionally, all language concerning expungement concerning arrest and public records is removed from the legislation.

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to Senate Bill 365 strikes Senate Floor Amendments numbers 1 and 2 in their entirety (See analysis of original bill).

Synopsis of Senate Floor Amendment #2

Senate Floor Amendment #2 to Senate Bill 365 adds an expungement process for arrest and public records. For arrests, charges or wrongful convictions of a felony offense a person may petition the district court for an order to expunge both arrest and public records relating to the felony under specific situations. According to AOC, this procedure requires a hearing by the court to determine if the person qualifies for the expungement. The AOC along with DPS are to develop rules and procedures to implement this including procedures for notifying the accused of the accuser's rights.

Synopsis of Senate Floor Amendment #1

Senate Floor Amendment #1 to Senate Bill 365 as amended adds a finding or probable cause by a judge before a DNA sample may be taken from a person arrested for the commission of a felony.

According to AOC, pursuant to NMRA 6-203 and 7-203, a magistrate or metropolitan court judge must make a probable cause determination within 48 hours after a defendant has been taken into custody if arrested without a warrant. If the arrest is made on an arrest warrant, there has already been a probable cause determination at the time of the issuance of the warrant. If no probable cause is found, the criminal complaint is dismissed and the defendant is released from jail. Since this is already part of the court's procedure, there should not be an increase in the use of resources to accomplish the amendment's goal.

Synopsis of SFC Amendment

Senate Finance Committee Amendment to Senate Bill 365 was amended to strike all of SJC amendments. The result of the amendment is Senate Bill 365 is back to its original draft and the analysis for the original bill draft does not change. (See Synopsis of Original Bill).

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to Senate Bill 365, according to the New Mexico Corrections Department; the amendments to the bill would require judges to make a finding of probable cause (that the person committed a felony) before a county jail or detention facility can request or collect a DNA sample from an arrested person. (See significant issues).

The adoption of Senate Judiciary Committee amendments does not change the original intent of the bill but by requiring courts to make probable cause determinations before DNA samples can be collected, it may be time consuming. It will also tend to increase the work loads of a judiciary already burdened with high caseloads.

Synopsis of Original Bill

Senate Bill 365 expands existing law (often referred to as “Katie’s Law”) to require all persons arrested for the commission of a felony provide a DNA sample of the Combined DNA Index System (CODIS).

The effective date of this bill is July 1, 2011.

FISCAL IMPLICATIONS

The DPS reports:

The NM DNA Identification System (NMDIS) is funded through collections of fees pursuant to the DNA Identification Act and deposited with the State Treasurer (fund 40200). The fund generates approximately \$250,000 per year and is dependent on the courts assessing and collecting the fee from persons convicted of a felony. The fund collected \$127,308 from July 1, 2010 through January 31, 2011. The current fund balance is \$722,560. It is unknown how much fund revenue is still available that has already been transferred to the City of Albuquerque.

The current NMDIS program has a yearly operating budget of approximately \$500,000 per year which include personnel salaries and benefits for 3 FTE and the outsourcing of DNA samples to private fee-for-service laboratories outside of New Mexico. Sample analysis costs vary depending on the contract. Historically NMDIS has sent about 6000 DNA samples per year for testing. The change from certain felon arrestees to all felon arrestees will increase the sample numbers requiring DNA testing.

The fund does not generate sufficient revenue to sustain the program long term without supplemental funding, either through federal grants or the general fund. The current known fund balance could sustain the program for approximately 2 years.

SIGNIFICANT ISSUES

SB 365 requires a person who is eighteen years or older who is arrested on any felony charge to provide a DNA sample upon booking. Samples shall be collected in accordance with rules and procedures adopted by the DNA oversight committee, and are subject to confidentiality and penalty provisions of the DNA Identification Act.

Current law requires the collection of a DNA sample upon arrest for sex offenses and felonies that involve death, great bodily harm, aggravated assault, kidnapping, burglary, larceny, robbery, aggravated stalking, use of a firearm or an explosive or a violation of the Antiterrorism Act.

These comments are posted on Governor Martinez’ website:

I have [also] seen how the collection of DNA evidence from certain felonies has led to the arrest of rapists and murderers in New Mexico.

That’s why I support the expansion of Katie’s Law to require the collection of DNA samples from those arrested for all felony offenses. I know this will help us capture violent criminals before they have a chance to hurt our children and our loved ones.

A contrary view is provided by the PDD:

The New Mexico Public Defender is an agency set up for the sole purpose of giving real meaning to the hallowed concept of “innocent until proven guilty”, otherwise shortened to “the presumption of innocence”. Neither the initial bill, nor this enlargement of that bill, respects the presumption of innocence. The danger of these kinds of measures is captured in the language we use. We begin to speak of those accused of crimes *as* “criminals”, making no distinction whatsoever. This is a slippery slope. For the best of reason--‘catching bad guys’--we are traveling down a road which could seriously undermine the very notions of justice in which most of us believe, regardless to the costs of efficient prosecution.

Existing law (NMSA 1978, § 29-16-10) provides for expungement of a person’s sample and DNA records from the DNA identification system and CODIS upon a person’s request and compliance with specified procedures when a conviction has been reversed, or when the underlying arrest has been resolved by dismissal, successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction, acquittal or no felony charge within one year of arrest. No expungement is permitted if the person has a prior felony conviction or a pending felony charge for which collection of a sample is otherwise authorized.

DUPLICATION

This bill (SB 365) duplicates HB 256.

OTHER SUBSTANTIVE ISSUES

According to Wikipedia, 21 states have passed legislation that allows law enforcement to take DNA samples from an arrestee and enter it into the state’s CODIS DNA database to see if that person has a criminal record or can be linked to any unsolved crime.

ALTERNATIVES

The PDD proposes DNA testing upon the conviction of a crime.

The DPS make this suggestion:

The NM DPS Forensic Laboratory could provide the DNA testing of the samples with approval from the DNA Oversight Committee. This alternative accomplishes several objectives: 1) DNA testing could be accomplished faster, allowing the information to be in the database sooner, and 2) the FLB could perform the testing at a cost lower than that charged by for-profit private laboratories. This alternative could save time which would enhance public safety and provide savings to the state.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DNA samples would continue to be taken only from persons arrested for felony sex offenses under the Sex Offender Registration and Notification Act as well as any felony that involves death, great bodily harm, aggravated assault, kidnapping, burglary, larceny, robbery, aggravated stalking, use of a firearm or an explosive or a violation of the Antiterrorism Act.

RS/bym:mew:svb