

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/11

SPONSOR Adair LAST UPDATED _____ HB _____

SHORT TITLE Treatment For Certain Sex Offenders SB 578

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	\$50.0	Recurring	General

(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
Total		+\$200.0	+\$200.0	+\$400.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of District Attorneys (AODA)

Department of Public Safety (DPS)

Department of Corrections (NMDC)

Public Defender Department (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 578 adds new requirements to the Criminal Sentencing Act.

The bill requires that persons paroled, after being convicted of aggravated criminal sexual penetration or first-degree criminal sexual penetration of a victim under age 13, must undergo medroxyprogesterone acetate treatment or its chemical equivalent. Parolees must begin the treatment one week prior to release from a corrections institution and must continue treatment until the parole board determines it is no longer necessary. The federal center for disease control shall administer the protocols for treatment and the parolee must be informed about potential side effects of the treatment.

Parolees are exempt from treatment if they have undergone or are willing to undergo a permanent surgical alternative to hormonal chemical treatment for sex offenders.

Medical doctors employed by the Corrections Department or the Parole Board are not required to participate in the parolee's treatment.

Section 2: Individuals convicted of child solicitation by electronic communication device are subject to supervised parole for not less than five year and not more than twenty years.

Individuals convicted of aggravated criminal sexual penetration or first-degree criminal sexual penetration of a victim under age 13, may be paroled, but the term of parole is life.

Section 3: \$50,000.00 is appropriated from the general fund.

FISCAL IMPLICATIONS

According to the Administrative Office of the Courts (AOC), as penalties become more severe more accused persons may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. These additional costs are not capable of quantification.

The bill appropriates \$50,000 to the Department of Corrections (NMDC) in fiscal year 2012 for the purposes of administering the program. However, the cost of the program will be recurring. Since the bill also increases the parole term for these offenders to the period of their natural life and also requires an indeterminate 5 to 20 year parole term for those offenders convicted of child solicitation by electronic communication device, these recurring costs will continue to grow with each year as to both the chemical treatment program as well as the ordinary costs of administering parole supervision.

According to NMDC, since the Department has no experience administering such a program, the Department is unable to determine what the costs of such a program would be. It may be that the \$50,000 is sufficient to administer the program in fiscal year 2012, but such an amount may be insufficient in later years as the number of parolees participating in program multiplies in each year.

Also, the bill will likely ultimately result in a significant increase in the number of persons being supervised on parole, since the parole term for these offenders is increased to the period of their natural life. The Department may require additional appropriations for this purpose in later years (past the current three year period).

According to NMDC, by increasing the length of the parole term to the natural life of the offender, the bill also increases the likelihood that these offenders will sometime have their parole violated and be returned to prison. Further, some of these offenders may never be able to obtain a parole plan approved by the Parole Board, meaning that they will serve the rest of their lives in prison as in-house parolees. This will result in significant increased costs to house these additional offenders.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate

ranges from an average of \$49,347 per year in a state owned/ operated prison to \$31,239 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,521 per year. The cost per client in Intensive Supervision programs is \$3,445 per year. The cost per client in Community Corrections is \$3,475 per year. The cost per client per year for female residential Community Corrections programs is \$41,653 and for males is \$24,803.

SIGNIFICANT ISSUES

SB will increase costs for NMDC. This increase in costs will result from the administration of the chemical treatment program, from lengthening the parole term of these designated offenders for the period of their natural life, and from adding an extended parole term (5 to 20 years) for those sex offenders convicted of child solicitation by electronic communication device.

Also, the Department does not currently provide medical services to any parolees or probationers. The Department only provides medical services through a contracted medical services provider for those offenders housed in its prisons. Therefore, this will be the first time that the Department will be required to provide medical services to parolees. The Department will presumably be required to contract with various physicians or medical service providers in various communities around the state and is not currently funded for this expense. It may also be somewhat difficult to monitor an offender's compliance with this program.

Another issue is that the bill mandates the federal Centers for Disease Control and Prevention to administer the protocols required by the bill. The supremacy clause of the United State Constitution prohibits a state from mandating a federal agency to administer a state program. This problem could be addressed by suggesting the State will follow CDC protocols.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

This bill could have significant performance implications upon Department prison and parole and probation programs. There would be generally a significant performance burden upon Department prison personnel who would be required to administer the chemical treatment program.

There could also be substantial increases in cost to the Department, since because these offenders would be paroled for life; violations of the conditions of parole could result in these offenders

returning to Department prison facilities. Further, some of these offenders will never obtain approved parole plans and thus will spend some or all their lives in prison as in-house parolees.

This bill would have substantial performance impacts upon the Probation and Parole Division because parole officers would be charged with monitoring compliance with the chemical treatment program

There could also be added performance implication resulting from increased inmate and parolee litigation claims alleging cruel and unusual punishment under the 8th Amendment.

ADMINISTRATIVE IMPLICATIONS

According to the Administrative Office of the District Attorney (AODA), the number of parole officers will need to be increased to handle the increased number of sex offenders who will be serving parole for the rest of their natural lives.

OTHER SUBSTANTIVE ISSUES

According to the (AODA) we do not know how effective hormonal chemical treatment is in reducing recidivism? Many CSPs (criminal sexual penetration crimes) committed against children are done through oral sex or digital penetration. Will this method of treatment affect those methods of committing CSP?

The effective date of this bill is 7-1-11. Does that mean that sex offenders convicted on or after 7-1-11 will be subjected to hormonal chemical treatment or does it mean that anyone paroled on or after 7-1-11 will be required to undergo hormonal chemical treatment?

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/bym