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FISCAL IMPACT REPORT

SPONSOR Rodriguez **ORIGINAL DATE** 1/25/2021
LAST UPDATED 2/11/2021 **HB** _____
SHORT TITLE Law Enforcement Assisted Diversion **SB** 105
ANALYST Rabin

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$1,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Department of Public Safety (DPS)

New Mexico Counties

Human Services Department (HSD)

Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

Senate Bill 105 appropriates \$1 million from the general fund to the Department of Finance and Administration to support law enforcement-assisted diversion (LEAD) programs in the City of Santa Fe, Santa Fe County, Rio Arriba County, Bernalillo County and Dona Ana County.

FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY22 shall revert to the general fund. Although SB105 does not specify future appropriations, establishing a new funding program could create an expectation that the program will continue in future fiscal years, therefore this cost is scored as recurring.

In New Mexico, LEAD programs are operational in Santa Fe, Bernalillo, Doña Ana, and Rio Arriba counties. The LFC recommendation for the Human Services Department's (HSD) Behavioral Health Services Division in FY22 includes \$1 million for grants to LEAD programs.

SIGNIFICANT ISSUES

Law Enforcement Assisted Diversion (LEAD) is a harm-reduction approach to drug crimes which gives police officers authority to divert persons to services in lieu of prosecution and jail. LEAD allows officers to refer individuals to community-based providers either at the time of arrest or if a person with high-risk for offending is identified. Once a person is referred to a provider, a case manager develops a care plan which may include intensive case management, individual intervention plans, treatment, education, and job skills training.

According to the Sentencing Commission (NMSC), the aim of LEAD programs is to stop the cycle of arrest, prosecution and incarceration by addressing issues such as addiction, untreated mental illness, homelessness and extreme poverty through a public health framework that reduces reliance on the formal criminal justice system.

The additional financial support in the bill for LEAD will help cover case managers, treatment and community services. Although New Mexico is a Medicaid expansion state, not all behavioral health services are covered by Medicaid so there is much unmet need for low-income individuals.

In an [October 2018 study of the Santa Fe LEAD program](#), NMSC determined an average cost to the justice system for LEAD clients of \$7,541 per client per year compared with \$9,098 for non-LEAD clients, a savings of \$1,588 per client per year, or 17 percent. The study also showed LEAD clients saw a significant decrease in the number of arrests six months post-referral.

Services offered by the Santa Fe LEAD program include:

- Intensive case management
- Emergency, transitional and long-term supportive housing
- Substance abuse assessment and counseling
- Mental health assessment and counseling
- Psychiatric services
- Suboxone/Methadone treatment
- Harm reduction services
- Employment assistance
- Psychosocial rehabilitation (e.g. skills training, wellness)
- Sustenance care (e.g. food, clothing, transportation, cell phone)
- Legal Aid
- Community referrals

According to the LEAD National Support Bureau, nationally LEAD program costs vary widely across communities depending upon characteristics of the LEAD participants (e.g., prevalence of homelessness) as well as community factors (e.g., cost of living, Medicaid coverage).

HSD expresses concerns the bill does not define what amounts would be allocated to each of the identified entities or how the allocations would be determined. The agency also notes the

proposed funding continues to support the “Rio Grande corridor,” rather than extending support to other counties or entities across the state.

PERFORMANCE IMPLICATIONS

Programs should be expected to report data and follow national standards for LEAD programs. HSD notes that the existing LEAD programs in Santa Fe, Doña Ana County, and Rio Arriba County all faced significant barriers in implementation. The agency suggests performance measures for this funding should be clearly defined, communicated and overseen to ensure fidelity to the LEAD model and assess outcomes.

ADMINISTRATIVE IMPLICATIONS

The Local Government Division of the Department of Finance and Administration (DFA) will generate grant agreements for the five local governments identified and will administer and process reimbursements for expenditures related to the LEAD program as requested by the grantees.

In analyses of previous bills providing appropriations for LEAD programs, the Public Defender Department has noted that expanding LEAD programs also has the potential to reduce attorney caseloads by moving low-risk individuals out of the criminal justice system, eliminating the costs associated with defending them in court. In addition, having more people get treatment, engage with social services, and reduce drug use may reduce crime which would further reduce attorney caseloads.

RELATIONSHIP

The General Appropriation Act includes \$1 million for grants to LEAD programs.

TECHNICAL ISSUES

HSD notes the funding included in this bill would be for operational needs but does not define what “operational” means or includes. A definition of “operational” would provide clarification to help ensure the proposed LEAD funds are used appropriately and will advance the intent of the LEAD model.

OTHER SUBSTANTIVE ISSUES

DFA notes that \$607 thousand was appropriated for LEAD programs during the 2019 legislative session, and provided the following table outlining the status of those appropriations:

Status of 2019 LEAD Appropriations
(dollars in thousands)

Grantee(s)	Amount	Expended	Reversion
Bernalillo Co & Dona Ana Co	\$ 50.0	\$ 43.5	\$ 6.5
Dona Ana Co, Rio Arriba Co & City of Santa Fe	\$ 307.0	\$ 92.7	\$ 214.3
Dona Ana Co	\$ 50.0	\$ 40.2	\$ 9.8
Rio Arriba Co	\$ 50.0	\$ 43.5	\$ 6.5
Bernalillo Co	\$ 150.0	\$ 150.0	-
Totals	\$ 607.0	\$ 369.9	\$ 237.1

Source: Department of Finance and Administration

The high level of reversions from these programs suggest they may not be able to fully utilize the funds provided in this bill, which revert at the end of FY22.

DFA notes SB105 does not specify if the allocation of these funds is to be distributed equally to each local government identified or if there is another method of allocation that should be considered, and the agency suggests it may be helpful to add language to clarify the intent of how these funds should be allocated.

New Mexico Counties states it supports diversion programs that help prevent recidivism for individuals who most frequently spend time in jail and emergency rooms, and notes that LEAD programs have been shown to have positive impacts on such individuals and are cost effective.

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