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FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 03/01/01 HB 289/HJCS

SHORT TITLE: Committing Felony Offender for Diagnosis SB _____

ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
No Fiscal Impact -- See Narrative					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Public Defender (PD)
Administrative Office of the District Attorneys (AODA)
Administrative Office of the Courts (AOC)
Department of Public Safety (DPS)
Corrections Department (CD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute would allow for diagnostic evaluations of defendants without the requirement of a commitment or incarceration. The Corrections Department, through the Probation and Parole Office, may conduct an evaluation.

FISCAL IMPLICATIONS

Since the bill would provide for continued evaluations by the Department of Corrections, while saving “bed space” in prisons, the fiscal impact is likely to be positive or zero.

There is no appropriation to provide a sufficient travel, staff and/or consultant budget to do the work required by the bill. However, this cost could be offset by cost savings to the Department based upon eliminating the need to process these 500 additional inmates each year and incarcerate them in the Department facility in Los Lunas for a short period of time.

OTHER SUBSTANTIVE ISSUES

The Corrections Department reports that prison bed space is expensive and must be used efficiently. One of the recommendations of the Independent Board of Inquiry was to better utilize existing medium-security bed space by eliminating the existing diagnostic commitment. This is a sentencing option that allows the court to order the commitment of an offender to the Department's custody for an indeterminate period of not more than 60 days while a pre-sentencing evaluation is conducted. Unfortunately, some judges tend to use these commitments to give certain offenders "a taste of prison" or as a kind of "scared straight" program. In any event, this program takes up scarce prison bed space that is better allocated to dangerous offenders.

The Department averages about 500 diagnostic commitments each year. In calendar year 2000, on any particular day, there were likely to be from 30 to 50 inmates incarcerated at the medium custody Reception and Diagnostic Center at Central NM Correctional Facility in Los Lunas. Their average length of stay was approximately 45 days. Recent efforts by the Department have lowered the average length of stay to about 21 days.

The Department of Health reports that a transition to DOH-supported evaluation services could be planned, including appropriate statutory changes and increased fiscal resources.

Present statutory language does not permit a judge to order a defendant to the Department of Health for such an evaluation. However, it would not be difficult for the court, with the assistance of a willing prosecutor and defense attorney, to request the evaluation at an earlier point in the proceeding and to frame the problem as one of incompetency to proceed in a criminal case. Then, they would be entitled to refer the defendant to DOH with a request for an evaluation of the defendant's competency.

DOH is responsible for pre-trial forensic evaluations as outlined in Section 43-1-1. Mental Condition of Criminal Defendants; Evaluation; Treatment, NMSA 1978. The Behavioral Health Services Division provides through contractual agreements evaluations of pre-trial competency, criminal responsibility, and ability to form specific intent. The statute clearly allows the district court the choice of using BHSD or other sources for these evaluations. The cost to BHSD to comply with this statutory responsibility has gone from \$478,500 in FY99, \$482,125 in FY00 and in the current fiscal year, it is estimated at \$561,150. Each completed evaluation, which includes expert witness testimony when required, costs \$725.

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