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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13

SPONSOR Kane LAST UPDATED _____ HB 395

SHORT TITLE 24/7 Sobriety Act SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General’s Office (AGO)
 Department of Finance and Administration (DFA)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

HB 395 enacts the “Twenty-Four Seven Sobriety Act,” defining a program of the same name, run by the attorney general’s office to coordinate efforts of state and local agencies to find and implement alternatives to incarceration for offenses involving driving under the influence of intoxicating liquor or drugs and other offenses involving alcohol, marijuana, or other controlled substances.

The attorney general’s office shall promulgate rules regulating the manner of testing for drugs and alcohol, providing procedures and apparatus for testing, determining user drug-testing fees, and requiring reports from state law enforcement agencies.

Each county may participate in the program, either through its sheriff or the sheriff’s designee. If twice-daily testing is ordered, the sheriff or designee shall establish the testing locations and

times. The courts may require participation in the program as a condition of release, probation, or youth placement. The parole board may condition parole on participation in the program.

User fees shall be collected into the treasury of the participating county, or may be retained by the sheriff's designee if the sheriff is not participating in the program, provided that the fees are only used to defray the costs of twice-daily testing. Any other fees collected as part of the program shall be deposited into the general fund of the county.

The "twenty-four seven sobriety fund" is created as a nonreverting fund in the state treasury. The fund shall be administered by the attorney general's office to defray costs of operating the program.

HB 395 also amends Section 66-8-102 NMSA 1978 to add the twenty-four seven sobriety program as a sentencing option for offenders convicted of DWI.

FISCAL IMPLICATIONS

HB 395 provides for user fees of not less than \$1.00 or not more than the actual cost of a test. User fees will be deposited with the county treasurer's office. The user fees will not cover any additional administrative costs for man-power associated with the testing and fee collection process.

HB 395 creates a non-reverting fund in the state treasury to defray office costs of operating the program, including purchasing and maintaining equipment and funding support services. HB 395 does not make an appropriation to the fund.

The NMCD provided the following:

Offenders who would otherwise be sentenced to prison to an active alcohol or substance abuse problem might now instead be placed on probation and then into the monitoring/treatment program created by this bill. Thus, the bill might result in probation instead of incarceration for some offenders, and probation costs are always cheaper than prison costs.

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 \$38,070 per year in a state-owned and operated prison to \$31,686 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 \$29,375 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 \$2,227 per year. The cost per client in Intensive Supervision programs is \$4,311 per year. The cost per client in Community Corrections is \$3,489 per year. The cost per client per year for female residential Community Corrections programs is \$33,281 and for males is \$21,728.

SIGNIFICANT ISSUES

The AOC provided the following:

HB 395 is modeled on 24/7 sobriety programs operating in several other states, including South Dakota, North Dakota, and Montana. The South Dakota program began as a pilot in one county in 2005, and is now operating in all but five of the state's 66 counties. Basic program components include twice-daily drug testing of DWI offenders with most dirty drug tests leading directly to incarceration. Transdermal testing for alcohol consumption, such as through Scram ankle bracelets or drug patch, may be substituted for twice-daily breathalyzer or UA testing, or may be imposed as a sanction for a dirty drug test. The program participant may also be ordered to install an ignition interlock device in their vehicle.

A 2010 evaluation of the South Dakota program concluded it had positive effects on the sobriety of program participants while they were in the program, but that more study was needed to evaluate any long-term effects on recidivism.

HB 395 provides the framework for implementation of a similar twenty-four seven sobriety program here in New Mexico. The purpose of the program as stated in HB 395, to “coordinate efforts among various state and local agencies” to find alternatives to incarceration for DWI offenders, is broader than the purpose statements of the other states' programs and perhaps could be focused more specifically on the attempt to reduce recidivism of DWI offenders through twice-daily testing. There are other elements of the program that are not defined in HB 395, such as its length, the sanctions for a positive drug test, and the role of the attorney general's office in running the program since the participants would be primarily probationers or parolees, among other undefined issues. Presumably these would be addressed in the administrative rules that HB 395 makes the responsibility of the attorney general's office.

ADMINISTRATIVE IMPLICATIONS

The AGO reported that, in South Dakota the birthplace of this program, a fee structure was set up where the Sheriff's offices would collect the fees for testing the offenders twice per day. The Sheriffs would create an account and then divide up the money and allocate a portion of that money to the AG's office in Pierre, South Dakota. A more detailed fee structure and fee allocation process may need to be delineated in this bill.

TECHNICAL ISSUES

The DFA provided the following:

Section 4, User Fees Distribution, states that testing user fees shall be applied and used only to defray the recurring costs of the twice-daily testing, including maintaining equipment, funding support services and ensuring compliance, but Section 3, Program Created - Administration Purpose B, states that the Office shall promulgate program rules to: 3) determine and set participation and user fees; provided that user fees for twice-daily testing shall not be less than one dollar per test or more than the actual cost of the test.

Therefore, there does not appear to be any ability to collect enough fees to defray the recurring costs of the program.

ALTERNATIVES

The DFA provided the following:

There are several programs that have been established by statute that are set up to monitor or supervise offenders that are convicted of driving under the influence of alcohol or drugs or other offenses involving alcohol or marijuana or other controlled substances.

Each county in the state operates or has the ability to operate a misdemeanor compliance program per Section 31-20-5.1 NMSA 1978. The guidelines for these county programs were established by the Administrative Office of the Courts (AOC). Many magistrate and some district court judges refer offenders of DWI or other alcohol or drug related charges to the county misdemeanor compliance program. These programs have the ability to require the offenders to alcohol and/or drug tests or to place the offender on an electronic monitoring or sobriety which tests 24/7 for alcohol use, if court ordered. These monitoring devices cost between \$7.00 and \$11.00 per day, plus possible installation fees.

In Bernalillo county, the detention center operates a community custody program which is founded on the concept of community-based supervision and treatment rather than jail confinement. The program was developed to provide an innovative approach to incarceration. The offenders who participate in this program wear an ankle monitor which tracks movement in and out of the home. The offenders are subject to random drug testing and if they test positive to alcohol or drugs, their violation is reported to the court. They must also attend substance abuse treatment while in the program.

Metro Court in Bernalillo county operates a first offender program for true first time DWI offenders. One of the requirements of the program is that they are subject to random alcohol and drug testing. Metro Court runs a probation division for offenders that are ordered to report to probation by Metro Court judges.

New Mexico also has what AOC terms problem solving courts. According to their website, these courts include: Adult, Juvenile, Family Dependency, and DWI drug courts along with Mental Health (or "Treatment") courts. More recently, AOC has also introduced a Veteran's court. Each of these court programs randomly tests the clients who are accepted to the program for alcohol and drug use.

POSSIBLE QUESTIONS

The AGO posed the following questions:

1. The offender pays the courts a user fee- how does that user fee get from AOC to the AG's office?
2. If the user fee gets submitted to the Sheriff's Office, how will that user fee get transferred to the AG's office?

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3. Does DFA play any role in collecting money or overseeing the money?
4. Should DFA play a role in collection or oversight of the monies involved in this program?
5. If the Sheriff's offices designate someone else to provide program services, would that designee be a county compliance program?
6. Would the potential designee have to bid on a contract?

EC/blm