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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/2017

SPONSOR Martinez LAST UPDATED _____ HB _____

SHORT TITLE Further Overdose Assistance Immunity SB 47

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

New Mexico Corrections Department (NMCD)

Administrative Office of the District Attorneys (AODA)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 47 amends the overdose prevention section of the Controlled Substances Act to define "seeking medical assistance" for alcohol or drug-related overdose and to expand immunity to persons who are seeking medical assistance for either drug or alcohol overdose. It protects from legal consequences a person seeking medical assistance for overdose if they are in violation of a restraining order, or in violation of probation or parole. Immunity is likewise extended to persons who are reporting an alcohol or drug overdose, or assisting an individual who is overdosing.

FISCAL IMPLICATIONS

AODA stated that it is possible that costs could decrease for the district attorneys, because the bill's extension of immunity may result in fewer cases. However, any savings will likely be offset by litigation in cases to resolve the issue of whether immunity applies.

SIGNIFICANT ISSUES

NMCD provided the following:

There are times when probation and parole officers gain evidence of supervision violations as a result of the probationer or parolee, or someone on his or her behalf, seeking medical assistance for an overdose. The officer might place the offender into a higher level of supervision (requiring more office and home visits, more drug testing, more counseling, etc.) initially instead of seeking to have the sentencing judge or parole board consider revoking the offender's probation or parole. However, under this bill, such an effort to change the supervision level to more closely supervise the offender because of learning of his overdose could be construed as a prohibited penalty.

Additionally, if the officer learns that the probationer or parolee sought treatment for an overdose and he knows the offender has custody of young child, he may need to ensure the safety of the child by involving child protective services or taking other appropriate action. If this resulted in the offender losing custody of his child because it was determined he was not a suitable parent for the child, this bill could be construed to prevent the other agency from removing the child, even temporarily, for legitimate and reasonable safety concerns.

DOH stated that New Mexico had the 8th highest drug overdose death rate among all states in 2015, down from 2nd in 2014. Most drug overdose deaths are unintentional and many are attributed to prescription opioid analgesics. There was an average of 498 NM drug overdose deaths each year from 2011 through 2015. There was also an average of 46 alcohol overdose deaths annually during that period. Many of these deaths involved both drugs and alcohol.

The bill would be beneficial in the efforts to curb and reduce deaths from overdose. The Department of Health (DOH) currently distributes the anti-opioid medication Naloxone. Naloxone has helped reverse hundreds of cases of overdose, and is becoming more widely available in New Mexico communities. However, one barrier to the use of Naloxone is that people experiencing overdose, or those around them who might help or call for help, may fear legal repercussions. The bill would expand already existing immunity for those experiencing overdose or those who would assist an individual experiencing overdose, and may make a person more willing to call for medical assistance, thus preventing drug and alcohol overdose deaths.

AOC stated that seeking medical assistance also includes "assisting an individual who is reporting an alcohol-or drug-related overdose or providing care to an individual who is experiencing an alcohol- or drug-related overdose or other medical emergency while awaiting the arrival of a health care provider." This provision requires some interpretation. Is immunity only applicable to a person who is assisting someone who is reporting an overdose and to a person who is assisting someone who is providing care to someone experiencing an overdose? Is immunity available to the person who is actually providing the care, or only to the person assisting? The sentence is not clear. And is immunity available only when the caregiver (or assistant) is waiting for a health care provider? Assistance that is not given while waiting for a healthcare provider does not appear to grant immunity. The intent of the provision should be clarified, or it will be litigated.

OTHER SUBSTANTIVE ISSUES

AGO stated that the original purpose of this type of statute (which many states have enacted) was to allow effective and lifesaving procedures to be initiated in opioid overdoses without the fear of criminal reprisal preventing those measures from being taken. Given this original purpose, it is unclear what would prompt the inclusion of alcohol. Additionally, the inclusion of protections for alcohol-related overdoses in the Controlled Substances Act does not seem congruous (and vice versa the inclusion of protections for drug-related overdoses in the Liquor Control Act). However, it is consistent to provide protections for alcohol-related overdoses as well as drug-related overdoses, as the same potential for allowing the administration of lifesaving measures exists in the context of an alcohol-related overdose.

EC/sb