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## FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3/17/05 HB CS66/aSJC/aSF#1

SHORT TITLE Detoxification Reform Act Changes SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1		

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of SFL #1 Amendment

The Senate Floor amendment #1 to the HJCS/aSJC for HB 66, as amended, requires a treatment facility to arrange translation of the application and explanation of rights for those who are unable to read. Removes proposed language under SJC amendment #17 that added a requirement for a facility to also translate a person’s right to apply for a writ of habeas corpus.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment removes “and commitment” from the title of the bill, provides a separate definition for “detention center” and clarifies the Department shall make rules for treatment facilities concerning physical conditions for protective custody commitments. Section H is removed relating to a facility detaining a person until a petition for involuntary commitment is heard. Section J is removed relating to a person seeking discharge from commitment. Language is added that requires a facility to arrange for translation for those unable to read. Sections 6 and 7 are removed relating to commitment hearings, probation and discharge procedures. Replaces the term “resident” with “client”. Clarifies that an officer may transport a person to a treatment facility or detention center, removing jail as an option.

#### Synopsis of Substitute Bill

The committee substitute proposes significant changes of definitions, processes, and liability under the Detoxification Reform Act. The bill also provides for the emergency civil commitment of

individuals impaired by alcohol and drugs and allows for detention for up to 72 hours.

The committee substitute is attempting to meet the community and law enforcement's need for the medical versus legal intervention for alcohol or drug impaired persons who are at a risk of harming themselves, others or property. New Mexico is part of a growing national trend to treat alcohol and drug impairment as a health issue, rather than a criminal justice issue. The bill describes a process for the voluntary and involuntary commitment "consistent with the least drastic means principle" to a treatment facility for persons impaired by alcohol or drugs. The bill describes the duties and responsibilities of the DOH involved with commitment procedures of both adults and minors.

### Significant Issues

The committee substitute for HB 66:

- Defines alcohol and drug impairment as the substantially endangered health and well-being of a person.
- Defines "treatment facility", allowing for detention centers providing detox services. Allows for a treatment facility to refuse a client if facility is full or person too ill, disruptive or dangerous. Decisions related to discharge and safety is left to the treatment facility.
- Defines an "authorized person" as a physician or police officer.
- Clarifies principle "consistent with the least drastic means", allowing for habilitation, treatment and protective custody to ensure treatment, security of facility and protection of self and others from physical injury.
- Defines intoxicated person as impaired mental or physical functioning with intentions of serious, unjustified bodily harm on self or others.
- Corrects language replacing "transportation to jail" with "protective custody".
- Treatment to include "protective custody" as one of the services extended to alcoholics, drug-impaired, or intoxicated persons.
- "Protective custody" defined as voluntary or involuntary, with commitment interval shortened from 5 days to "not less than 12 hours or more than 72 hours".
- Protective custody occurs if the person is disorderly in public, unable to care for their own safety, or has threatened or inflicted damage to another's property, in addition to harm to self or others.
- Protective custody will occur at the nearest licensed and suitable facility, not necessarily one closest to client's residence.
- Language added that ensures a detained person's constitutional rights are protected.
- Grants authority to treatment facility to admit voluntary clients.
- Clarifies state policy by adding "drug impairment" in addition to alcohol intoxication as in need of protection.
- A record of protective custody will not be considered an arrest or be entered in a criminal record.
- Adds a new section protecting treatment facilities and their employees from civil liability other than "gross negligence or intentional misconduct".

### **PERFORMANCE IMPLICATIONS**

DOH would be responsible for the developing policies and procedures regarding the care and rehabilitation of persons impaired by alcohol and drugs, and facilitate meetings of community

partners to disseminate information and provide guidance.

### **FISCAL IMPLICATIONS**

Treatment programs can cost significantly less than incarceration, especially with new “offenders”. Intoxicated or impaired persons detained under this Act will incur the costs associated with treatment. This may or may not be difficult to enforce if the intoxicated or impaired person lacks either a payor source or a private funding source. Less than 45% of all New Mexico counties allow indigent funds to be used for substance abuse treatment.

This bill could lead to an increase in the number of people the state’s treatment facilities are asked to treat, and treatment beds are in short supply around the state.

Regarding commitment hearings, the bill indicates that costs for an examination shall be borne by the county in which the person resides if the person is indigent.

### **ADMINISTRATIVE IMPLICATIONS**

The DOH and the judiciary will have additional administrative, regulatory and personnel training needs in the recognition and handling of alcohol or drug impaired persons.

### **TECHNICAL ISSUES**

The term “Guardian” should be clarified as to what type of authority, as guardian can mean a child’s parent or “guardian”, or a power of attorney or “legal guardian”.

The opportunity to “contact” counsel (as opposed to “consult”) may not ensure that a client’s rights are protected.

### **OTHER SUBSTANTIVE ISSUES**

CYFD is concerned there is no specific protection or provision for children or adolescents who may be victims of physical harm or threat against their person.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

Inconsistencies would still exist as to the length of time in a treatment facility. The constitutional rights of involuntarily committed incapacitated persons may not be fully protected.

### **POSSIBLE QUESTIONS**

Is there a procedure in place to help law enforcement officials manage an intoxicated person with a coexisting medical illness, psychiatric disorder, or acutely intoxicated?

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