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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-7-2006

SPONSOR Carraro LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Sexual Predator Civil Commitment Act SB 671

ANALYST McOlash

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	\$11,500.0	\$11,500.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act  
 Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Department of Health (DOH)  
 Corrections Department (CD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 671 appropriates \$11,500,000 from the general fund and enacts the Sexual Predator Commitment Act, a separate act from the laws pertaining to the Sex Offender Registration and Notification Act and the Sexual Offender Management Board. This bill seeks to define certain sexual predators as violent and place such individuals under civil commitment within the State. The court imposed civil commitment would permit long-term control, care, and treatment of sexually violent predators.

The bill provides for the commitment and treatment of sexually violent predators by: (1) creating new processes to identify potentially sexually violent predators (based on mental abnormality or personality disorder and a list of qualifying offenses; (2) referring those potentially sexually vio-

lent predators to a committee for review and evaluation; (3) creating new legal proceedings and processes for determining if a potential predator is, in fact, a violent sexual predator; and (4) instituting involuntary and indefinite long-term commitment of persons determined to be violent sexual predators. The legal processes identified and included in SB 671 include jury trials, proof beyond a reasonable doubt, and unanimous verdicts with regard to certain issues, and requires courts to determine mental health status and propensity for sexual violence.

Other state agencies would be involved in enforcing the law including a multi-disciplinary team, the Sex Offender Management Board, the Secretary of Corrections and the Attorney General. Following certain procedures, a petition for commitment would be filed and the district court would determine if a person is a sexually violent predator. Annual review and certain procedures for release are included in the proposal.

### **FISCAL IMPLICATIONS**

Senate Bill 671 appropriates \$11,000,000 to the Department of Health, \$150,000 to the Attorney General, \$150,000 to the Public Defender Department, and \$200,000 to the Administrative Offices of the Courts from the General Fund to carry out the Sexual Predator Civil Commitment Act in fiscal year 2007.

The appropriation of \$11,500,000 contained in this bill is a recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of FY07 shall revert to the general fund.

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DOH believes that a new and separate facility may be required to house sexual predators committed under the Sexual Predator Civil Commitment Act, because there currently is no separate and secure facility to provide housing and treatment for those persons within DOH's current operations. Additionally, female persons committed as sexual predators would likely require separate housing and treatment, which might necessitate that DOH provide not one, but two separate secure facilities in order to comply with the provisions of SB 671.

Operation of a new secure treatment facility by DOH would likely require additional security personnel and treatment staff. DOH would need to study all cost factors involved to determine if the \$11 million appropriation identified in SB 671 would be sufficient to provide an appropriate facility (ies) and operating budget. Treatment costs (and SB 671 requires an elaborate treatment and evaluation process) are considered at the high range for inpatient mental health treatment, and added to that are the costs of securing the facility.

### **SIGNIFICANT ISSUES**

#### DOH

Seventeen states – Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, South Carolina, Texas, Virginia, Washington and Wisconsin – have states with laws that have similarities to the Sexual Predators Commitment Act

proposed by SB 671. The United States Supreme Court has upheld the Kansas sexual predator civil commitment statutes as meeting constitutional substantive due process requirements.

### AGO

Involuntary civil commitment of violent sexual predators is a significant legal issue and has been challenged in a number of states. Of import is the incredible expense associated with any diagnosis and treatment. Additional costs would be incurred if a person found to be a sexually violent predator were required to be housed in a separate facility, as contemplated by the proposal.

Significant constitutional issues, especially under the New Mexico Constitution, including 8<sup>th</sup> amendment cruel and unusual punishment issues, ex post facto issue, and due process would be raised. A good overview of the difficulties in enforcing an involuntary civil commitment law is presented by the State of Washington. Federal oversight is pervasive and the actual administrative and other costs are beyond the original estimates.

A “*Research Overview: Sex Offender Treatment Approaches and Programs*” prepared for the New Mexico Sentencing Commission states that, in addition to supervision and registration programs, several states have passed civil commitment statutes as a way to manage their sex offender populations. It is anticipated that the amount of funds needed to handle the growing population of civilly committed persons would be expected to double in the next five years.

### Corrections

It is unclear how this type of commitment can be considered a civil commitment. The procedure outlined is the same procedure for a criminal trial. The rules of evidence as applicable to a criminal trial apply. The offender is afforded all the rights available to defendants at a criminal trial and the standard of proof is beyond a reasonable doubt, which is the same standard as for a criminal trial. Then after the trial, the person is at least potentially housed at the Department of Corrections. What separates this from a criminal trial is that the defendant is on trial for what they might do, not for what they have done.

The inclusion of the Children’s Youth and Families Department (CYFD) as an “agency with jurisdiction” seems to imply that children maybe locked up for the rest of their lives if they are found to be covered by this act. The inclusion of the DOH as an “agency with jurisdiction” seems to indicate that a person who has never been convicted of a crime maybe incarcerated for the rest of their life if they are found to be covered by this act.

This bill probably will be challenged as being unconstitutional double jeopardy. The probability of this challenge succeeding is enhanced by the fact that a person found to be subject to this law is subject to multiple trials before they are released.

### **TECHNICAL ISSUES**

A detailed analysis needs to be done to determine the total fiscal impact for the judiciary.