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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/2007
LAST UPDATED 1/26/2007

SPONSOR Martinez **HB** _____

SHORT TITLE Immunity for Assistance for Overdoses **SB** 200

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (CD)

Attorney General's Office (AGO)

Public Defender Department (PDD)

Administrative Office of the District Attorney (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 200 provides limited immunity from prosecution for a person who seeks or obtains medical assistance for a drug-related overdose. The bill also provides limited immunity from prosecution for those who assist an individual in seeking medical attention that is suffering from a drug overdose.

FISCAL IMPLICATIONS

The Corrections Department (CD) states that if the bill results in a few less felony convictions for possession of a controlled substance, then it would slightly decrease the prison population and probation/parole caseloads. It would also slightly decrease department revenues (the probation or parole supervision fees gathered by the department) due to slightly fewer persons being placed on parole/probation for possession convictions.

The contract/private prison annual cost of incarcerating an inmate is \$23,867 per year for males.

The cost per client to house a female inmate at a privately operated facility is \$21,651 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in probation and parole for a standard supervision program is \$1,467 per year. The cost per client in intensive supervision programs is \$3,383 per year. The cost per client in department-operated community corrections programs is \$3,503 per year. The cost per client in privately-operated community corrections programs is \$7,917 per year. The cost per client per year for male and female residential community corrections programs is \$39,401.

SIGNIFICANT ISSUES

The Attorney General's Office (AGO) notes the only significant issue is the language contained in paragraph C which states that: "the act of seeking medical assistance for someone who is experiencing a drug-related overdose *may be used as a mitigating factor in a criminal prosecution* pursuant to the Controlled Substances Act." The legislative intent of this particular language is rather vague and may impact drug prosecutions in unforeseen ways. For example, does this language impose new evidentiary standards on courts and prosecutors? Does it seek to offer new guidance in sentencing defendants?

The Public Defender believes that the bill seeks to balance the State's interest in criminalizing drug use with a significant interest of preventing needless death. Often, drug addicts will not seek treatment for themselves or others when an overdose occurs due to the stiff criminal penalties for possession of a controlled substance.

The Administrative Office of the District Attorney (AODA) lists the following significant issues:

The bill would allow a drug user or trafficker to be immune from prosecution if he/she seeks help for themselves or another because of a drug-related overdose. The bill would also permit a court to allow mitigation of a drug user or trafficker if he she sought assistance for someone experiencing an overdose

This will provide a legal loophole for drug users and traffickers to escape accountability and responsibility for their actions. The incentive to save a life should be enough without having a guarantee of immunity from prosecution as the motivator to seek medical assistance. Most addicts will not get help unless the system requires it. Taking away the ability to prosecute addicts with the goal towards getting them into drug courts or other treatment alternatives will negatively affect the community.

PERFORMANCE IMPLICATIONS

The CD notes that a slight reduction in prisoners or probationers/parolees could allow existing staff to have a little more time to provide services to those offenders already in prison and on probation/parole.

TECHNICAL ISSUES

The AODA notes that the granting of immunity and the allowing of mitigation for violations of any existing criminal statutes should be left to the discretion of the judiciary as each case is factually, procedurally and legally unique.

OTHER SUBSTANTIVE ISSUES

The AGO states that as long as SB 200 limits immunity from prosecution to Section 30-31-23 NMSA 1978 and not other sections of the Controlled Substances Act, then there are no other significant issues to be concerned about from the criminal justice perspective. However, expanding immunity beyond that may potentially limit prosecutions of more substantial dealers and traffickers who remain liable under Section 30-31-20 NMSA 1978.

According to the PDD, this bill can be considered a harm reduction initiative. It will prevent unneeded death by allowing those with potentially fatal overdoses to seek medical care without the concern of prosecution.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PDD believes that if the bill is not enacted there would be additional deaths due to drug overdoses that are preventable.

The AODA states that presently prosecutors, defense attorneys and the courts can take into account the attempts of a person to seek medical assistance for another or themselves. Likewise, drug users would continue to be referred to drug courts or other treatment alternatives while being held accountable for their conduct. There would be no adverse consequences.

BS/nt