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FISCAL IMPACT REPORT

SPONSOR Maestas, A. ORIGINAL DATE 1/29/08
LAST UPDATED 2/8/08 HB 488/aHJC
SHORT TITLE Substance Abuse & Crime Prevention Act SB _____
ANALYST C. Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$900.0	\$900.0	\$1,800.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative office of the Courts (AOC)

Public Defender (PD)

Commission on Higher Education (CHE)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 488 strikes the \$900.0 appropriation to the Human Services Department.

The amendment strikes the language “replacement therapy” and “narcotics replacement therapy program” with “medication assisted therapy.”

The amendment also inserts subsections A, B, C, or D of the existing controlled substances statute and mandates along with consent of the suspect, a written statement signed by the person waiving the time limits to delay court proceedings.

Synopsis of Original Bill

Sec. 1: Short title of the act.

Sec. 2: Contains the proposed finding of the legislature, including: (A) substance abuse treatment provides proven results in rehabilitating those with substance abuse issues; (B) public safety is enhanced by providing treatment for non-violent offenders and saving room in prisons and jails for violent offenders; (C) public health is improved by treating those with substance

abuse issues; (D) community health and safety will be improved by providing treatment to those with substance abuse issues.

Sec. 3: Provides relevant definitions for “qualified treatment professionals” and “substance abuse treatment programs.” Importantly, treatment programs exclude drug treatment programs in jails or prisons.

Sec. 4: Provides that a person charged with a violation of Section 30-31-23 NMSA 1978 (possession of controlled substances) may be eligible for a treatment program. If charged with possession of a controlled substance, the court can order an assessment of the person to determine the extent of addiction and develop a treatment plan in conjunction with a qualified treatment professional. The treatment may not last for more than one year and the court shall not order incarceration of the person as a condition of participation in the program.

The Court may reinstitute criminal proceedings if the terms of the substance abuse program are not complied with. The court may also dismiss the proceedings against the person before the maximum period prescribed for the person’s participation in a treatment program.

The court shall dismiss the charges against the person upon successful completion of the program.

Upon dismissal, the person may petition the court to seal the records relating the criminal charges that were dismissed, with the exception of non-public records filed with the attorney general. This section also provides an affirmative defense to perjury or giving false statement “due to the person’s failure to recite or acknowledge the arrest, indictment or information in response to any inquiry made of the person for any purpose.

Sec. 5: Provides that the substance abuse treatment program may be available in lieu of probation or parole revocation hearings if the person is charged with possession of a controlled substance.

Sec. 6: Requires the interagency behavioral health purchasing collaborative to provide a written report no later than October 31, 2008, and every October 31 thereafter. Also directs who shall receive the reports and what, specifically, shall be included in the reports. Finally, allows for outsourcing related to production of the report.

Sec. 7: Allocates \$900,000 to the program from the general fund.

Sec. 8: Specifies the effective date of the act as July 1, 2008.

FISCAL IMPLICATIONS

HB488 appropriates \$900,000 from the General Fund to the Human Services Department (HSD) for expenditure in FY09. Any unexpended or unencumbered balance remaining at the end of FY09 will revert to the General Fund.

This bill could improve the overall operation of the criminal justice system and decrease recidivism. However, the LFC is not aware of whether or not sufficient funding exists to support this initiative.

SIGNIFICANT ISSUES

The courts in New Mexico and nationwide have found that incarceration on its own does not cure offenders of underlying problems with substance abuse, nor does it keep them from re-offending. National studies have shown that within 3 years of release from prison, approximately 2/3 of all offenders, including drug offenders, are rearrested for a new offense; 1/2 are convicted of a new crime; and 1/2 are re-incarcerated for a new crime or parole violation. Some studies show that 85% of drug-abusing offenders returned to drug abuse within 1 year of release from prison.

There is, however, a significant body of national research supporting the efficacy of treatment for substance abusing offenders. Such studies also indicate that the treatment must be attended regularly by the offender and be for a sufficient length of time to show positive effects. An evaluation of the Drug Abuse and Treatment Outcome Study (which evaluated a nationally representative sample of outpatient and long-term residential drug treatment programs in 2003) showed that 6 to 12 months of regularly attended treatment appeared to be a threshold for observing lasting reductions in drug abuse.

HB 488 mandates treatment for substance abusing offenders and also recognizes that the state continues to struggle with an under funded substance abuse treatment infrastructure, especially in rural parts of the state where counselors, psychiatrists, and treatment programs are in especially short supply. HB 488 appropriates \$900,000 to the human services department to implement substance abuse programs. This amount would provide for some improvement in the availability of substance abuse treatment programs, but it is unclear how the funds would be distributed around the state, and what courts would still be faced with a statute mandating treatment without the treatment facilities available in the court's area.

Insofar as many New Mexico drug court programs also accept people who are charged with a violation of Section 30-31-23, there is a possible conflict between the requirements in Section 4 of this act and the ability of the state's drug court programs to work with such offenders. By this act, such people could not be referred to a drug court program (which can last more than one year and can include detention as a sanction). The Judiciary believes strongly in the capabilities and success of the drug court model, and believes its programs should remain available to such offenders as this act describes.

ADMINISTRATIVE IMPLICATIONS

HB488 defines a qualified treatment professional, but does not mention specific coursework, degrees or licensure as being required (for example, New Mexico Counseling & Therapy Practice Board licensure through the New Mexico Regulation and Licensing Department). The University of New Mexico (UNM) offers a Substance Abuse Studies Training Program that provides certificates upon completion of classes, and provides educational hours that program participants may use to fulfill state licensure requirements. Per the UNM Program Director, follow-up is not done to quantify how many participants subsequently obtain licensure. The Director reported that during 2006-07, the program offered 42 classes with a total participant attendance of 670. It is difficult to determine if the state would have sufficient qualified treatment professionals to comply with HB488 directives. Further, HB488 planning and implementation would require the successful collaboration of several departments and their staff.

TECHNICAL ISSUES

Provide a more explicit definition for “qualified treatment professional” to include specific coursework, certifications, degrees or licensure required to adequately fulfill the provisions of HB488.

OTHER SUBSTANTIVE ISSUES

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ALTERNATIVES

Continue the historical funding of the successful drug court program which is in its third year of a five year plan to spread drug courts to every county in the state of New Mexico. Currently drug court programs exist in 21 of the state’s 33 counties.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Non-violent drug users will continue being sent to jail and prison instead of receiving comprehensive rehabilitative services.

CS/bb