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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/09

SPONSOR McSorley LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Drug Court Expansion and Creation SB 8

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
\$0.0	\$1,600.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
\$0.0	\$0.0	\$0.0	NA	NA

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	NA	NA

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Department of Corrections (DOC)

Administrative of the District Attorneys (AODA)

Public Defender (PD)

**SUMMARY**

Synopsis of Bill

Senate Bill 8 seeks to appropriate \$1,600,000 from the General Fund to the AOC for expenditure in FY10 to replace lapsing federal and other funds for drug courts (\$489,994), as well as to expand (\$309,400), and create (\$800,606) drug courts.

**FISCAL IMPLICATIONS**

The appropriation of \$1,600,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall revert to the general fund.

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

State funding for existing and new drug court programs would allow programs to expand services and new programs to begin offering services in areas of the state where either limited services or no services exist. Both efforts require administrative personnel and resources to oversee and operate drug court programs.

The following table presents a breakdown of the entire appropriation:

**FY10 Drug Court Funding Requests**

<u>Program</u>	<b>Replacement Requests</b>	<b>Expansion Requests</b>	<b>New Program Requests</b>
1st ADC--Santa Fe	\$28,600		
4th ADC--Guadalupe Co.			\$171,450
4th ADC--San Miguel Co.	\$12,000		
5th JDC--Chaves Co.	\$20,265		\$172,925
5th JDC--Lea Co.			\$48,986
5th FDC--Hobbs		\$53,700	
6th ADC--Lordsburg	\$145,202		
8th JDC--Raton	\$124,360		
8th JDC--Raton	\$29,494		
8th JDC--Raton		\$14,240	
8th ADC--Raton	\$15,901		
8th JDC--Taos		\$13,800	
8th ADC--Taos		\$19,860	
8th FDC--Taos		\$7,800	
9th ADC--Roosevelt Co.			\$239,345
11th JDC--Gallup	\$57,086		\$167,900
12th ADC--Otero Co.	\$57,086		

13th JDC--Valencia Co.		\$51,000	
13th ADC--Sandoval Co.		\$81,000	
13th FDC--Cibola Co.		\$68,000	
<b>Subtotals</b>	<b>\$489,994</b>	<b>\$309,400</b>	<b>\$800,606</b>

**Legend:**

ADC = Adult Drug Court  
 JDC = Juvenile Drug Court  
 FDC = Family Dependency Drug Court

<b>Grand Total of Program Requests =</b>	<b>\$1,600,000</b>
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Replacement Funds (\$489,994): Nine drug court programs are at risk of shutting down or cutting back services in FY10 if they cannot replace lapsing funds and resources. Federal funds for drug courts, though relatively plentiful in the past, have been cut significantly; what few grant announcements there are become highly competitive and difficult to obtain. Seven drug court programs (in Santa Fe, Las Vegas, Roswell, Raton, Gallup, and Alamogordo) were helped in FY09 by a congressional earmark secured through the efforts of Senator Jeff Bingaman, but those funds will lapse in the first quarter of FY10. Two other drug court programs (in Lordsburg and Raton) received non-recurring funding through local community support, and need to replace those funds in order to stay in operation. The Judiciary places a high priority on institutionalizing with recurring state funding such programs that have been successfully serving their community through federal or local resources. These programs enjoy strong support in their communities.

Expansion Funds (\$309,400): Eight drug court programs would use the expansion funds to improve services and increase program capacity in answer to local demand. Through increased supplies, staffing, and treatment contracts, these programs would be able to increase their participant capacity as well as the extent and quality of services offered to their participants.

New Drug Court Funds (\$800,606): These funds would allow district courts to begin implementation of five new drug court programs around the state. Two of the proposed new adult drug courts would be in Guadalupe and Roosevelt counties, counties that do not yet have a drug court of any kind (currently, drug courts exist in 24 of the state’s 33 counties). The other three would provide new programs targeting underserved populations in communities that are already benefiting from the drug court model. The Judiciary places a high priority on the implementation of drug courts throughout the state, with the goal of making them accessible to everyone who could benefit from such programs. One of the main goals of the Judiciary’s 5-Year Plan for Growth of New Mexico Drug Courts is to implement a drug court in every county in the state.

**SIGNIFICANT ISSUES**

In January 2006, The New Mexico Supreme Court approved a 5-Year Plan for Growth of New Mexico Drug Courts (available at [www.nmadcp.org](http://www.nmadcp.org)). That plan has two main goals: (1) to implement a drug court program in every county of the state (there are currently programs in 24 of the state’s 33 counties); while (2) providing a predictable and stable funding request to the legislature each year of the plan. FY10 will be the fourth year of the 5-Year Plan. The plan calls for funding in FY10 of \$1.6 million.

The state's drug court programs were recently cited by the Governor's Task Force On Prison Reform (June 2008) and the New Mexico Sentencing Commission as having contributed to the unexpected decline in the NM Corrections Department inmate population. The low recidivism rate of drug court graduates (only 9.5% in the 3-years post graduation versus the 46.7% reoffense rate for released inmates) shows an increasing ability to stop the "revolving door of incarceration" in New Mexico, as the growing number of programs statewide (12 new programs since 2004, a 50% increase statewide) has coincided with the decline in the inmate population. Given the lower cost per day of drug court programs (\$24.75 versus \$85.59 for NMCD inmates); New Mexico saves, on average, \$22,000 per year for every offender diverted from prison into a drug court program. Multiplying that figure by the 1200 participants in drug court programs leads to savings that could total \$2.6 million a year. Any cut in current funding to the drug court programs will cause a reduction in program participants, and by that a loss of potential savings in criminal justice costs that may well have exceeded the money "saved" by the cut in funding.

Though quantifying the exact savings of drug courts in New Mexico in criminal justice and victimization costs is difficult, a recent study by the Washington State Institute for Public Policy (WSIPP) provides another helpful point of comparison. It was commissioned by that state's legislature to identify alternative options to incarceration that could (a) reduce the future need for prison beds, (b) save money for state and local taxpayers, and (c) contribute to lower crime rates. WSIPP found and analyzed 571 rigorous comparison-group evaluations of adult corrections, juvenile corrections, and prevention programs. Among other findings, WSIPP determined that both adult and juvenile drug courts provided significant reductions in recidivism over treatment as usual, and even more importantly determined that each could lead to overall costs savings of over \$4600 per participant. Using that general savings figure with the number of adult and juvenile drug court participants in FY08 would indicate an overall savings to the citizens of New Mexico in criminal and victimization costs of almost \$3.7 million in FY08.

According to the AOC, other studies have looked at the cost benefits of drug court programs from a larger perspective, considering not just avoided incarceration costs, but the following comparisons with probationers: (1) drug court graduates' wages are higher during and after drug court than probationers; (2) they work longer than probationers, resulting in higher taxes and FICA payments, lower TANF and food stamps use; and (3) drug court graduates health care costs and mental health services were significantly lower than those for probationers. Various city and county studies around the country have traced such cost savings for their drug court programs and realized that for every \$1 they spent on their drug court programs they were saving from \$2 to \$10 in other costs.

Other cost savings are realized through the birth of drug-free babies to participants of the drug court programs. There were at least 20 drug-free babies born to program participants in FY05, many of whom would have been drug-affected if not drug-addicted without the mother's participation in the drug court program. Hospitalization and ongoing health care costs for drug-affected or addicted babies are substantial. For example, children with fetal alcohol syndrome can require \$1.4 million in treatment over their lifetime.

Family Drug Courts seek permanency for the child separated from its parents due to an abuse and neglect petition, caused by the parents' substance abuse. Studies show that Family Drug Court parents reunify with their children significantly faster than parents who are not part of such programs, benefiting the child as well as avoiding further foster care, social worker, and Medicaid costs.

## **PERFORMANCE IMPLICATIONS**

FY 10 is the sixth year that the courts will participate in performance-based budgeting. The Drug Court Advisory Committee and the state's drug court coordinators have worked with the LFC to establish performance measures for New Mexico drug court programs. The drug court programs provide performance measure data quarterly to the LFC.

The funding outlined in this appropriation is necessary to the programs' ability to gather the data necessary to calculating and reporting those performance measures.

## **ADMINISTRATIVE IMPLICATIONS**

A minimal to moderate negative administrative impact could result due to increased probation/parole caseloads, especially since there are no appropriations or funds for additional probation and parole officers.

There has been some discussion of the AOC taking over the operation of all drug courts. Currently, NMCD essentially operates the drug court in the second judicial district with nine FTEs, and has one FTE in the Farmington office. The other drug courts in the state are not operated by NMCD.

NMCD is not opposed to AOC taking over these above-mentioned drug courts, but would be opposed to losing the 10 FTEs and treatment dollars currently appropriated to NMCD for drug court operations and supervision. NMCD has a substantial need to keep those FTEs and resources to serve other critical areas of probation and parole, particularly intensive supervision and related programs.

## **OTHER SUBSTANTIVE ISSUES**

According to the AOC, National studies have shown that 60 to 80 percent of prison and jail inmates, parolees, probationers, and arrestees are under the influence of drugs or alcohol during the commission of their offense, committed the offense to support a drug addiction, were charged with a drug- or alcohol-related crime, or are regular substance abusers.

Incarceration on its own has not resolved the problem, as 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.

Court-mandated treatment on its own is also insufficient as approximately 70% of probationers and parolees drop out of drug treatment or attend irregularly prior to a 3-month threshold, and 90% drop out prior to 12 months. These thresholds are significant as an evaluation of the Drug Abuse Treatment Outcome Study suggests that 3 months of drug treatment may be a minimum for detecting response effects of the intervention, while 6 to 12 months hold greater promise of a lasting reduction in drug use.

By combining treatment with the coercive power of the judiciary, the drug court model has repeatedly shown through national studies that it outperforms virtually all other intervention strategies for drug involved offenders: recidivism of drug court graduates is much less than for similar offenders, the cost-per-client of drug court participants is significantly less than that for

incarceration, and even those who do not successfully complete a program have a greater chance of long-term success due to the longer period of treatment received during their involvement in a drug court program.

Such results have led to the spread of drug courts nationwide, from the first in 1989 in Dade County, Florida, to the over 2100 active today. New Mexico has also benefited from the success of the drug court model, with its drug court programs growing from 1 in 1994 to 41 active today, with several more in the pilot and planning stages. Because of the success of its drug court programs, the New Mexico Judiciary continues working with communities around the state to maintain existing programs as well as establish new drug court programs. Currently, there are drug court programs in 12 of the state's 13 judicial districts, and 24 of the state's 33 counties.

The current NM Corrections Department inmate population is approximately 6500. Given the studies referenced above, a conservative estimate is that 60% of that population, or 3900 inmates, have a serious history of substance abuse and could benefit from the treatment, supervision, and judicial oversight provided by a drug court program. New Mexico's drug court programs have a current capacity of roughly 1200 participants, indicating that the state would benefit from a three-fold expansion of the current statewide program capacity.

The funds requested in this bill are necessary to the continued operation of nine programs, the expansion and improvement of eight others, and startup funds for five new drug courts in underserved areas of the state.

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

As stated earlier, the funds requested in this bill are necessary to replace lapsing federal or local funds for nine drug court programs, the expansion and improvement of eight others, and the startup of five new drug courts in underserved areas of the state. Given the success of these programs, the loss of existing programs and the failure to expand or implement programs in underserved areas will lead to increased problems with substance abuse in the affected areas, including increased workload for law enforcement, caseload for the judiciary, and need for beds in detention and corrections facilities.

As drug courts successfully treat their participants for substance abuse, they often find participants suffering from a co-occurring disorder that had previously been masked by the participant's substance abuse. Identification of the participant's schizophrenia, bipolar disorder, severe depression or any other mental health issue allows the drug court to refer to, and in some cases provide, the treatment necessary to provide the participant their first chance of full recovery. An ancillary consequence of not enacting this bill is the continued substance abuse by those with co-occurring disorders who will remain doubly afflicted, often unaware of their own underlying mental health issue.

CS/svb