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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/09
 LAST UPDATED 02/23/09 HB _____

SPONSOR Beffort

SHORT TITLE Extend Emergency Detention SB 147/aSPAC

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Human Services Department (HSD)
- Higher Education Department (HED)
- Health Policy Commission (HPC)
- Association of Counties
- Department of Health (DOH)
- Aging and Long Term Services Department (ALTSD)

SUMMARY

Synopsis of SPAC amendment

The Senate Public Affairs Committee Amendment requires that a detained individual held for longer than 24 hours be seen by a health professional in person, who may be assisted by a mental health professional via telehealth, where available, shall be evaluated provided mental health services through the single entity for behavioral health services. The amendment also adds that detained individuals shall only be released in daylight hours.

Synopsis of Original Bill

Senate Bill 147 amends the Mental Health Code [43-1-10 NMSA 1978] to extend emergency detention from no more than 24 hours to no more than 72 hours for individuals in need of an emergency mental health evaluation.

FISCAL IMPLICATIONS

None identified for the state; however, county detention facilities may have additional costs for detaining individuals for a longer period of time.

SIGNIFICANT ISSUES

HSD states that while the amendment to SB147 requires some form of evaluation and treatment if a person is to be detained beyond the current limit of twenty four hours, the amendment does not provide any due process protections. According to HSD:

This emergency detention statute cannot substitute for needed community-based and crisis stabilization services. The amendment appears to require provision of services through the single entity for behavioral health. However, services from behavioral health providers in the network of the single statewide behavioral health entity are provided under contract specifying what fund sources may be used for what services and populations. It is likely that Medicaid services would not be billable if provided in a detention center and limited general fund resources would need to be redirected from existing serious mentally ill individuals being served in order to meet the requirements of this bill.

The Association of Counties notes that individuals with mental illness are not served by and do not belong in jails and yet county detention facilities are increasingly used as de facto mental health hospitals. Most county detention facilities are not equipped to either evaluate or treat mental illness. The detained individual cannot be mingled with prisoners and must be adequately protected from possible suicide attempts. The proposed amendment would triple the time that a person could be detained in a county detention facility awaiting appropriate care and attention. This would create a significantly increased financial burden for counties both in the form of increased costs for housing and increased liability exposure.

DOH suggests the proposed change to statute may be unconstitutional and the SPAC amendment does not address this concern. Specifically, DOH writes:

SB147 would effectively allow a person to be held for ten or more days (if a holiday or weekend were involved) without any hearing thus infringing on a person's liberty. It is well established in American Jurisprudence that anytime a state wants to detain a person against their will, to be constitutionally sound, there has to be an analysis or a balancing of the competing interests; the state's interest to pursue a particular goal and the process a person is due before he/she is deprived of a constitutional right. The proposed language offers no protections for the person allowed to be maintained in jail facility pending transport to an evaluation facility and ignores the reality that most detention centers have limited psychiatric treatment available. There is no apparent or delineated rationale for such an extended detention in a jail facility for a person that requires immediate mental health treatment.

Current provisions of the statute only allow a person to be housed in a detention facility as an exception in cases of extreme emergency and for a limited amount of time while transport to an evaluation facility is arranged. The law currently requires certain actions be taken to maintain that person's "status" as someone that is not charged with any crime

and that will be protected and maintained, but not treated at the detention center. To allow a detention center to maintain someone in need of immediate mental health treatment appears inconsistent with the language in the statute that mandates that a person be taken “immediately to an evaluation facility” except in cases of extreme emergency.

SB 147, as amended, would have a person transferred to an “alternative inpatient facility where available”. Such inpatient facilities are not plentiful in New Mexico, but are available in different locations in the state and each can be accessed within the currently allowed 24 hour time frame. Current law already recognizes the need to transport persons from rural areas of the state to more metropolitan areas, but does not greatly extend a person’s detention and does not have a detention center act as a crisis mental health care provider.

BE/svb:mt