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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/09

SPONSOR Rue LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Transport of Mentally Ill in Certain Cases SB 605

ANALYST Weber

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General (AGO)  
 Public Defender Department (PDD)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 605 inserts a new section into the Crimes Against Household Members Act (Sec. 30-3-10 ff, NMSA 1978) calling for detention and transport by law enforcement of certain persons for emergency mental health evaluations.

Detention and transport shall occur whenever:

1. the law enforcement officer has probable cause to believe that the person has committed a crime classified as a misdemeanor or petty misdemeanor under the Crimes Against Household Members Act
2. the law enforcement officer has reasonable grounds to believe that the person has mental illness;
3. the alleged victim consents to his/her transportation for evaluation; *and*
4. the person is not charged with a felony.

SB 605 also states that nothing in the new section would preclude the filing of a criminal complaint against a person.

## FISCAL IMPLICATIONS

No direct fiscal implications are anticipated for the state general fund but a requirement under the specified conditions for an emergency mental evaluation would create expenses for the receiving facility that may be uncompensated or an added expense for private or public insurance programs.

## SIGNIFICANT ISSUES

The PDD offers the following detailed information.

NMSA Section 43-1-10, the section under which this bill's emergency mental health evaluations would take place, already provides for evaluations of the precise suspects that this bill seeks to address. The current law allows officers to transport persons if:

1. the person is otherwise subject to lawful arrest;
2. the peace officer has reasonable grounds to believe the person has just attempted suicide;
3. the peace officer, based upon his own observation and investigation, has reasonable grounds to believe that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Immediately upon arrival at the evaluation facility, the peace officer shall be interviewed by the admitting physician or his designee; or
4. a licensed physician or a certified psychologist has certified that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

NMSA. 1978, § 43-1-10 (2008). Currently, it is not *required* that any officers transport any class of suspects, but officers can transport a suspect lawfully under arrest if the officer makes the determination that such emergency intervention is warranted. As a result, the proposed bill would not *authorize* any new emergency mental health treatment but would *require* it based on the outlined criteria.

“[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). New Mexico's civil commitment procedure is codified by the Mental Health and Developmental Disabilities Code, NMSA 1978m §§ 43-1-1- to -25. If a person arrived at a treatment facility by way of emergency transport (as opposed to a court order), an admitting physician or psychologist must make a determination whether the person is to be released or detained for evaluation and treatment. *Id.* at 42-1-10(E). However, he or she can be kept at a detention facility for up to 24 hours. NMSA. 1978, § 43-1-10 (D) (2008). [SB 147 proposes extending that period to 72 hours]. If the person is going to be detained for evaluation, he or she must be advised of the proceedings, possible consequence, his or her right to a hearing within seven days, right to independent mental health professional, and right to counsel. *Id.* at § 43-1-10(F). After that, more extensive commitment procedures apply. Section 43-1-11 provides a procedure for a 30 day commitment and after that 43-1-12 allows commitment to be extended for up to six months. NMSA 1978, §§ 43-1-11 to 43-1-12. With the increased level of commitment come increased procedural protections.

Section 43-1-10 already authorizes an officer to transport a person lawfully under arrest for any crime and this bill is not needed to transport a person in need of emergency mental health services. At the same time, this reviewer is not aware of any reason to specify misdemeanor domestic violence suspects as requiring a different procedure for emergency mental health evaluation and treatment than persons suspected of other crimes. Creating a requirement that the alleged victim, un-trained in mental health, consent to treatment could pose significant problems.

The AGO adds other observations regarding this new material.

Although it is written in terms which appear to “require” the transportation of a person charged with a misdemeanor or petty misdemeanor under the Crimes Against Household Members Act, which may include “assault against a household member”, (NMSA Section 30-3-12), or “battery against a household member”, (NMSA Section 30-3-15), the bill also appears to prohibit a peace officer from transporting a person for a mental health evaluation if that person is arrested for committing a felony under that act, which may include the crimes of aggravated assault against a household member (NMSA Section 30-3-13) and aggravated battery against a household member (NMSA Section 30-3-16).

The bill also appears to prevent a peace officer from transporting a person arrested under that act for an emergency mental health evaluation unless the alleged victim consents to the person’s transportation. This would substitute the victim’s judgment and desire for the discretion granted the peace officer under current law. The officer is placing a significant decision in the hands of a person who may have suffered a serious injury. Liability issues may also be created if the victim recants their consent or feels intimidated into making a decision.

NMSA Section 43-1-10 currently allows a peace officer to detain and transport a person subject to lawful arrest for an emergency mental health evaluation under certain circumstances. That law does not distinguish between arrests for felonies and arrests for misdemeanors. NMSA Section 31-1-7 currently allows a peace officer to arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member. This is an exception to the “misdemeanor rule” which generally requires that a misdemeanor be committed in the presence of the peace officer before they may make an arrest. See *State v. Ochoa*, 2008-NMSC-023, 10, 143 N.M. 749, 182 P.3d 130 (2008).

Current law therefore “allows” a peace officer to detain and transport a person for an emergency mental health evaluation if that person is subject to lawful arrest for any crime committed under the Crimes Against Household Members Act. This bill may have the effect of prohibiting those evaluations if a person is “charged with” a felony under that act, or the alleged victim does not consent to an emergency mental health evaluation.

The AOC follows up.

SB 605 could result in more arrests than under existing law.

The Mental Health and developmental Disabilities Code currently provides that peace officers may detain and transport a person for emergency mental health evaluation and care in the absence of a legally valid court order only if the officer has reasonable grounds to

believe the person has just attempted suicide or presents a likelihood of serious harm to himself or others, and must be detained to prevent such harm. (Sec. 43-1-10 A, NMSA 1978) SB 605 would allow the detention and transport for mental health evaluation persons suspected of committing a crime, who might not otherwise be detained without the filing of a criminal complaint. SB 605, as introduced, does not expressly provide for the existence or absence of a valid court order, as set forth in Sec. 43-1-10 A, regarding procedures for the detention and transport of a person.

HSD provides some non-legal context.

SB605 may have an unintended consequence of encouraging officers to regard any violent behavior as a mental illness, further enhancing stigma against persons with mental illnesses. A recent longitudinal study of 34,653 people reported in the Archives of General Psychiatry reported that drug and alcohol abuse combined with severe mental illness did increase the likelihood of violent behavior. However, the study also found that even having mental illness and substance abuse combined ranked only ninth among the top ten predictors of future violence, behind factors such as youth, history of juvenile detention, violence and physical abuse, parental criminal history and unemployment.

SB605 would seem to require that law enforcement officers receive Crisis Intervention Training (CIT) or similar such training to make a determination to take a person for an emergency mental health evaluation. The bill leaves to the discretion of the officers the determination of ‘reasonable grounds to believe that the person has a mental illness.’ Officers will need to have available to them a triage or hospital facility for evaluation and assessment. Transportation could also be a cost and capacity issue in the more rural and frontier areas of New Mexico.

The prevalence of domestic violence calls involving a person with behavioral health needs is presently unknown. The Behavioral Health Collaborative amended its current Strategic Priorities to include both “Crisis” and “Jail Diversion” after receiving public input from a number of New Mexico communities about conditions under which people with mental illness and substance use crises are held in jails and detention facilities. “Crisis” and “Jail Diversion” services represent a policy priority for both the Collaborative and a number of Local Collaboratives.

## **TECHNICAL ISSUES**

The AOC notes the following changes related to technical issues.

1. State law in Chapter 29 on Law Enforcement refers to individual officers as “peace officers” rather than “law enforcement officials.” See Sec. 29, Article 1, Peace Officers in General. Similarly, Chapter 43 on Commitment Procedures uses the term “peace officers.” See Sec. 43-10-1 A. To avoid any confusion, SB 605 should use the same terminology.
2. A more appropriate section of the law to insert the provisions of SB 605 might be Chapter 43 relating to Commitment Procedures instead of Chapter 30 which sets forth definitions for criminal offenses. The legislation seeks to establish procedures, not define new crimes.

## **POSSIBLE QUESTIONS**

Should a payer of last resort be identified, possibly the transporting police department, to insure that this does not result in additional uncompensated care for the receiving facility?

MW/mt