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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/13
 SPONSOR Lopez LAST UPDATED 03/01/13 HB _____

SHORT TITLE Prostitution Intervention & Treatment SB 512/aSJC

ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	Unknown	Recurring	Prostitution Education and Intervention Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	Unknown	Unknown	Recurring	Prostitution Education and Intervention Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Defender Department (PDD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney (AODA)
- Attorney General's Office (AGO)
- Human Services Department (HSD)

Department of Health (DOH)
Children, Youth and Families Department (CYFD)

Responses Not Received From
Department of Public Safety (DPS)
Parole Board (PB)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendments to Senate Bill 512 clarify that prostitution does not consist of “offering to engage” in sexual acts for hire (only knowingly engaging in a sexual act for hire); nor does patronizing prostitutes consist of “offering to hire” a prostitute (only knowingly hiring a prostitute).

Synopsis of Original Bill

Senate Bill 512 (SB512) would create the prostitution education and intervention program administered by the Department of Health. The first component would be focused on providing persons, who were referred to participate by court order, with a broad spectrum of services and education relating to prostitution. The second component would be focused on providing persons, who were referred to participate by court order, with a broad spectrum of services and education relating to patronizing prostitutes. The bill would also amend NMSA 1978 30-9-2 and 30-9-3 to provide a post-adjudication requirement that a person convicted of patronizing a prostitute, under NMSA 1978 30-9-3, or a person convicted of prostitution, under NMSA 1978 30-9-2, must participate in the respective component of the prostitution education and intervention program. The mandatory nature of this participation would be triggered upon a person’s first conviction for either patronizing a prostitute or for prostitution. Upon a second conviction, a court retains discretion to require participation.

The bill, which makes participation in the prostitution education and intervention program a mandatory condition upon a first conviction, also provides a person convicted for the first time under NMSA 30-9-2 and 30-9-3 with the guarantee that their conviction will be subject to a conditional discharge, such that upon the completion of either one of the two components of the prostitution education and intervention program, the conviction would be considered without an adjudication of guilt. Thus, the conviction would convert to a discharge and dismissal, freeing a person from the concerns associated with a conviction under the law. This conditional discharge would be available only one time to a person convicted.

SB 512 also creates a non-reverting “prostitution education and intervention fund” to be administered by the Department of Health (DOH). The DOH, Human Services Department (HSD) and Children, Youth and Families Department (CYFD) would collaborate to create a two-component education program to serve those convicted of prostitution and of patronizing prostitutes.

FISCAL IMPLICATIONS

Senate Bill 512 would add a new section to law establishing the Prostitution Education and Intervention Fund as a non-reverting fund in the state treasury to be administered by the Department of Health (DOH). The fund would consist of fees collected by the DOH under the provisions of the bill and other gifts, grants and donations. The bill establishes the process for the DOH to draw money from the fund. The bill would establish a \$250 fee to be charged by the DOH for the training and would require that the fee revenue be deposited in the Prostitution Education and Intervention Fund.

The DOH indicates a program of this magnitude and scope, which includes alcohol and drug treatment as well as assistance or treatment for addictive or compulsive behaviors, would likely far exceed the contribution of a \$250 per person fee, income from investment of the fund and any appropriations, gifts, grants and donations. A study comparing the direct cost of treatment for substance abuse to monetary benefits to society, determined that on average costs were \$1,583 compared to a benefit of \$11,487, a benefit-cost ratio of 7:1 (Ettner, SL et al “Benefit-cost in the California treatment outcome project: does substance abuse treatment “pay for itself”, Health Services Research, 2006).

The proposed legislation contains no general fund appropriation for start-up activities that will be required to carry out the provisions of the bill. The proposed fee is unlikely to provide the resources necessary to develop and implement the proposed program. There is also a concern that individuals who are candidates for participation in this program may not have the financial resources to pay a fee.

The Administrative Office of the District Attorneys (AODA) indicates an additional cost associated with the establishment of a system to provide the Attorney General’s Office (AGO) with all convictions for first time offenders of prostitution or patronizing a prostitute to meet the requirement that the AGO keep a nonpublic record for use by the courts to determine if an offender is eligible for a conditional discharge.

Continuing Appropriations Language

The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

The Human Services Department (HSD) indicates the prostitution education and intervention program may include alcohol and drug treatment. The program could benefit from including the opportunity to conduct screening and intervention for all behavioral health disorders, including trauma related mental health disorders. The second component of the program focuses on those referred by a court for patronizing prostitutes. Although the program may include assistance or treatment for addictive or compulsive behaviors, some screening and intervention for such behaviors as a mandatory element of the program could allow for early identification of serious sexual or other mental disorders.

In the case of patronizing underage prostitutes, SB 512 is not clear whether the court would have discretion about dismissing charges for repeat offenders. If charges were dismissed, sex offender registration would be affected.

The Department of Health (DOH) indicates it provides harm reduction services such as condom distribution and sexually transmitted diseases (STD) treatment to prostitutes in public health clinics and outreach events because they are reluctant to seek care from primary care providers. Information on the numbers of prostitutes or those who solicit prostitutes is not known, so the scale of the proposed education program is not known. However, few prostitutes appear to have financial resources and eventually seek care for more serious conditions in emergency rooms. Some characteristics of prostitutes seen at health outreach events include:

- High prevalence of chlamydia and gonorrhea, with gonorrhea in the throat being common;
- Intravenous drug use of heroin and methamphetamine use which complicates efforts at changing life choices of prostitutes; and
- In addition to female prostitutes, there are number of transgender individuals engaged in prostitution who are at risk for STDs.

PERFORMANCE IMPLICATIONS

The Department of Health (DOH) indicates prostitution diversion schools have been advocated as a way of reducing recidivism by men who solicit sex. Interventions that show the most promise for success are those that offer multiple sessions. (Shively, et. al, *Final Report on the Evaluation of First Offender Prostitution Program*, 2008).

ADMINISTRATIVE IMPLICATIONS

The AODA indicates setting up a system for magistrate and metropolitan courts to provide the AGO with copies of all first time convictions may be difficult. These are the busiest courts in our state and these additional responsibilities will require additional staff and the development of a system to meet the requirements of this bill.

The DOH indicates the educational intervention proposed in the bill would need to be delivered by other agencies besides the Department of Health, including law enforcement, the HSD, rape crisis centers, etc. Additional administrative tasks would include developing a curriculum, securing a space for classes, tracking attendance, collecting fees, managing the fund, monitoring compliance and promulgation of rules.

TECHNICAL ISSUES

The Attorney General's Office indicates under current law, there exists two forms of a non-adjudication of guilt, or what is called a conditional discharge. Under NMSA 31-20-13, a person can receive a conditional discharge if they have never been convicted of a felony, previous to the pending charge, and is entitled to such relief if they have never exercised it before. The conditional discharge available under the controlled substances act is less restrictive, but only available to possession cases (as opposed to trafficking offenses). The narcotics conditional discharge is only available to a person who has no other prior conviction for possession and clearly distinguishes itself from 31-20-13. The bill proposes to create a conditional discharge for a person convicted of a petty misdemeanor. It appears that the bill is creating a third variety of

conditional discharge, although the language within the bill does not attempt to distinguish its legal affect from NMSA 31-20-13. Thus, without explicit language alerting a person or the court that this conditional discharge does not implicate the conditional discharge under NMSA 31-20-13, there is a strong chance that confusion could ensue as to which variety of conditional discharge applies, and whether a previous application of a conditional discharge precludes its current institution.

The CYFD indicates allowing first offense charges for prostitution and patronizing prostitutes to be discharged would leave no record of these offenses and could have a negative effect on employers and other entities which perform background screenings

Other operational aspects of the program, including criteria for successful completion of the program, are not specified in SB512.

To be consistent with the policy of the Legislature retaining the power to appropriate on page 5, line 6, after the word “appropriated” insert “by the legislature”.

RAE/blm