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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/4/15

SPONSOR     Martinez     LAST UPDATED                      HB                                     

SHORT TITLE     Further Immunity for Overdose Assistance     SB     441    

ANALYST                     A. Sánchez                    

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Narrative					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 Department of Health (DOH)  
 Attorney General’s Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 441 proposes to amend Section 30-31-27.1 MSA 1978 (Overdose prevention - limited immunity) to include alcohol-related overdoses and to eliminate the prospect of civil forfeiture or criminal liability arising from violations of possession of a controlled substance or paraphernalia laws, restraining orders or probation or parole involving persons seeking medical assistance for an overdose. “Seeking medical assistance” is clarified to mean either reporting, assisting or providing care in the event of an overdose.

SB 441 also would add language to NMSA 1978, Chapter 60, Article 7B (Regulation of [alcoholic beverage] Sales and Service to Minors) to provide language akin to the Criminal Code’s overdose prevention statute to that act.

### FISCAL IMPLICATIONS

AOC reports that new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

The DOH provides the following regarding deaths due to substance and alcohol overdose and outcome of the “911 Good Samaritan” laws:

New Mexico is ranked third in the nation for substance overdose. In 2013, the mortality rate was 21.8 age-adjusted deaths for every 100,000 New Mexico residents due to substance overdose. The total number of reported deaths was 458 individuals in 2013. The mortality rate from substance overdose has more than tripled since 1990 and is now the leading cause of injury death ([nmhealth.org/publication/view/data/474/](http://nmhealth.org/publication/view/data/474/)). Complete data on total annual overdoses is not available, as some individuals do not seek treatment and not all overdoses are fatal; therefore, true rates are probably even higher.

New Mexico has the highest alcohol attributable death rate in the nation (*Stahre M, Roeber J, Kanny D, Brewer RD, Zhang X. “Contribution of excessive alcohol consumption to deaths and years of potential life lost in the United States.” *Prevention of Chronic Disease* 2014;11:E109*). In 2013, over 1,000 people died of alcohol attributable causes in New Mexico (2013 NMDOH; CDC [www.cdc.gov/alcohol/ardi.htm](http://www.cdc.gov/alcohol/ardi.htm)). The most recent economic impact report from the CDC estimated that alcohol cost New Mexico \$1.9 billion in 2006, the third highest cost per capita in the nation (Sacks JJ, Roeber J, Bouchery EE, Gonzales K, Chaloupka FJ, Brewer RD. “State costs of excessive alcohol consumption”, 2006. *AJPM*. 2013;45(4):474-85).

In 2001, New Mexico became the first state in the nation to legalize and implement a naloxone distribution program to individuals using substances and to those who associate with them. Our state was first in the nation to pass legislation to encourage intervention when individuals experience an overdose, better known as the “911 Good Samaritan Law”. This has been replicated by 24 states since that time. Seven of these offer immunity to individuals on probation and parole: District of Columbia, Delaware, Georgia, Minnesota, New Jersey, Pennsylvania and Vermont. (Law Atlas: <http://lawatlas.org/query?dataset=good-samaritan-overdose-laws>).

An evaluation of the Washington State Good Samaritan Law (enacted in 2010), reported 88% of individuals surveyed who use opioids indicated they would be more likely to summon emergency personnel during an overdose as a result of the passage of a Good Samaritan Law. (Banta-Green, C. Washington’s 911 Good Samaritan Overdose Law: Initial Evaluation Results, Nov. 2011)

Naloxone is a prescribed medication that reverses the effects of an opiate overdose and helps revive an individual. In 2013, the DOH Overdose Prevention and Education Program enrolled 1,048 individuals as trained responders and distributed 1,706 doses of naloxone to them. In 2014, 1,357 individuals were enrolled in the program and 2,452 doses were distributed. In that same year, 1,230 individuals returned to obtain more doses of naloxone, and 847 reversals were reported.

In addition, the DOH offers a program working with primary care providers to educate and offer naloxone as part of a co-prescription effort. Providers who participate in this effort prescribe naloxone to their patients when they also prescribe opiates. This effort has been expanded to include pharmacists, who may dispense naloxone to individuals who have been prescribed opiates.

New Mexico's current 911 Good Samaritan Law does not grant protection to individuals who are on probation or parole. Individuals engaging in substance use are often reluctant to respond to help another individual experiencing an overdose due to fear of potential citation, arrest, or incarceration by law enforcement. This fear is often increased when an individual is on probation or parole due to their restrictions on using substances or associating with those who use substances.

New Mexico has a long history of working with individuals using substances, medical professionals, community organizations, law enforcement, and local government entities to reduce the mortality rate from overdose. The situation has been improving as access to services increase, including more access to naloxone, along with reducing the amount of prescription medications being dispensed. New Mexico has had a 16% reduction in substance overdose mortality rates between 2011 and 2013.

According to AOC, SB 441 prohibits civil forfeiture of property for a person seeking medical assistance for him or herself or another. New Mexico's Forfeiture Act, Section 31-17-1 NMSA 1978 et. seq., permits seizure of property pursuant to Section 31-27-4 NMSA 1978. Section 31-27-6 NMSA 1978, governing court hearings and determinations, requires the state to prove by clear and convincing evidence that the property is subject to forfeiture and the criminal prosecution of the owner has resulted in a conviction, as well as specified property valuations. Civil asset forfeiture has been criticized both because the standard of proof is lower than the criminal standard of proof of beyond a reasonable doubt, and because some believe it leads to "policing for profit" and the targeting of desirable assets.

PDD opines that SB 441 seeks to balance the State's interest in criminalizing certain drug and alcohol use with a significant interest of preventing needless death. Often, people will not seek treatment for themselves or others when an overdose occurs due to the stiff criminal penalties and drastic but easily achieved civil forfeiture consequences (for instance, of automobiles).

## **PERFORMANCE IMPLICATIONS**

This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

The DOH FY16 Strategic Plan includes the following which will be impacted by this bill.

Result 1: Improved health outcomes for the people of New Mexico, Objective: Prevent drug overdose deaths; Performance Measure: Number of naloxone kits provided in conjunction with prescription opioids. HB422 also relates to the prevention of drug overdose deaths, which is an indicator in the 2014 DOH Statewide Health Improvement Plan.

## **TECHNICAL ISSUES**

AOC provides the following regarding immunity provided in the bill and existing laws:

- 1) SB 441, Section 2(A) and (B) provide limited immunity for a person providing or in need of medical assistance for violating the provisions of Section 60-7B-1 or 60-7B-9 NMSA 1978. Section 60-7B-9 provides a petty misdemeanor penalty for violations of

Section 60-7B-1 through 60-7B-8 NMSA 1978. There is a question as to whether one can “violate” Section 60-7B-9.

2) SB 441 prohibits a person from being “arrested, charged, prosecuted *or otherwise penalized...*,” without providing guidance as to what might constitute being “otherwise penalized.” It is not clear whether the prohibition against being penalized extends to criminal sanctions, civil fines, or any other possible penalty.

3) SB 441 prohibits civil forfeiture of property for a person seeking medical assistance for an overdose, for him or herself or another, but does not prohibit civil forfeiture “pursuant to the Forfeiture Act, Section 31-17-1 through 31-27-8 NMSA 1978.

## **OTHER SUBSTANTIVE ISSUES**

DOH included these disparity issues in its response:

- Overdose mortality and alcohol attributable death disproportionately impacts marginalized populations in New Mexico, including ethnic minorities, individuals using substances, individuals experiencing homelessness, individuals recently released from incarceration, and individuals with lower socio-economic status.
- The alcohol attributable death rate among American Indians (121.2 deaths per 100,000 population) is nearly three times higher than the rate among non-Hispanic whites (40.7 deaths per 100,000 population). The rate among Hispanics (53.1 deaths per 100,000 population) is also higher than the rate among non-Hispanic whites.
- Whites and Hispanics have the most deaths due to drug overdose, at 24.7 per 100,000 population and 24.3 per 100,000 population, respectively. Rio Arriba County has the highest drug overdose death rate in the state, 66.9 per 100,000 population.

PDD states that SB 441 can be considered a harm reduction initiative motivated by caring and decency. It will prevent unneeded deaths of New Mexicans (as well as the costs attendant with those deaths as when a wage earner dies and his or her children go unsupported and the cost of their care must be taken over by the State) by allowing those with potentially fatal overdoses to seek medical care without the concern of prosecution.

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

There will likely be otherwise preventable overdose deaths due to New Mexicans’ fears of being charged with a crime or a civil forfeiture preventing them from seeking help when it is needed.

Individuals on probation and parole or who have a restraining order will continue to be at risk for citation, arrest, or incarceration if they respond to help an individual experiencing an overdose. If not enacted, these protections will not expand the protections to those who respond to overdoses associated with alcohol, including violations of the provisions of regulation of sales and service to minors.

ABS/aml