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FISCAL IMPACT REPORT

SPONSOR Stapleton ORIGINAL DATE 1/30/18
 LAST UPDATED _____ HB 160

SHORT TITLE Nonviolent Offender Interventions SB _____

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$76.5	\$76.5	\$229.5	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 135, At-Risk Youth Interventions; House Bill 20, Prison Recidivism Reduction Program.
 Relates to Appropriation in the General Appropriation Act.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts
 Children, Youth and Families Department
 Department of Health
 Human Services Department

No Response Received From

Corrections Department

SUMMARY

Synopsis of Bill

House Bill 160 (HB160) would amend the powers and duties of the Human Services Department's (HSD) Behavioral Health Services Division (BHSD) pertaining to nonviolent adult and juvenile offenders who have behavioral health diagnoses. The bill would require BHSD to create, implement, and evaluate for effectiveness a framework for targeted, individualized interventions that address those individuals' behavioral health needs and connect them to resources and services that reduce the likelihood of recidivism, detention, and incarceration. Such services may include supportive housing, public assistance, medical assistance, behavioral health therapy and employment training.

The effective date of these provisions would be July 1, 2018.

FISCAL IMPLICATIONS

The bill does not include an appropriation.

The Human Services Department (HSD) indicates its Behavioral Health Services Division (BHSD) would need to hire a program manager at \$76.5 thousand annually to create, implement and evaluate the effectiveness of the framework required by the bill.

Although BHSD has programs in place to support justice-involved adults, it is likely that additional funding would be needed to provide sufficient service statewide to support the targeted population. The amount of program funding that would be needed is currently indeterminate, in part because the term “offender” requires clarification to determine the scope of the population to be served. Clarification of the scope of the population may enable HSD to determine impacts to the Medicaid program.

The House Appropriations and Finance Committee substitute for HB2 includes a \$500 thousand special appropriation to HSD contingent on enactment of House Bill 20 or similar legislation to assist jails and prisons to initiate a recidivism reduction program.

SIGNIFICANT ISSUES

The Human Services Department (HSD) notes the term “offender” is not defined and the bill is unclear regarding eligibility for the proposed framework. Section 31-5-20 NMSA 1978 defines an adult offender as "an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies”. Other statutes define various kinds of juvenile offenders. The bill does not indicate whether it refers to offenders who are incarcerated or offenders who are under the jurisdiction of courts or other authorities in the community.

Although BHSD is the state mental health authority, the Children, Youth and Families Department (CYFD) has jurisdiction over children and youths involved in the justice system and/or protective services, including those with behavioral health diagnoses. The targeted population is likely to include individuals served by CYFD, potentially creating overlapping responsibilities.

BHSD currently provides the types of services mandated in HB160 to justice-involved adults with serious mental illnesses and substance abuse disorders, but those services are not available statewide. Other activities such as BHSD’s supportive housing program, do not explicitly support adult offenders; however, the criteria for supportive housing eligibility intentionally allows most individuals with criminal backgrounds to obtain rental assistance, housing counseling, life skills training, and case management. Creating and implementing a statewide framework as described in this bill would require programmatic expansion and funding, and additional staffing.

ADMINISTRATIVE IMPLICATIONS

The Children, Youth and Families Department (CYFD) indicates the bill includes “nonviolent juvenile offenders who have behavioral health diagnoses”, but the bill does not require

coordination with CYFD although this population is involved with CYFD, and CYFD actively works to engage these youth with the interventions described in the bill possibly resulting in duplication of efforts.

The state's Behavioral Health Collaborative could address the issues provided for in the bill.

The Department of Health (DOH) indicates providers at the Center for Adolescent Relationship Exploration (CARE) program at DOH's New Mexico Behavioral Health Institute (BHI) currently provide the types of services described by HB160 to their clients. HB160 proposes to make the Human Service Department (HSD), Behavioral Health Services Division (BHSD) responsible for creating, implementing, and evaluating a framework for these services that could create conflict, and it may remove the planning process from those who know and are treating the individual at BHI to those who are not involved in the care of the individual.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HSD reports HB135 also amends the power and duties of the Behavioral Health Services Division of HSD to create, implement and continually evaluate the effectiveness of a framework for targeted, individualized interventions that address the behavioral health needs of nonviolent adults and juvenile offenders who have behavioral health diagnoses, and connect them to resources and services. Where the bills differ is that HB135 adds at-risk youth to the individuals served by the additional BHSD duties. HB135 also creates a county behavioral health transportation fund and allocates \$1 million to support that fund.

HB20 requires that correctional facilities screen for mental illness and substance use disorder and help connect inmates to behavioral health services upon release. Depending on how the term "offender" is interpreted, there may be duplication of requirements for corrections (HB20) and HSD (HB160).

TECHNICAL ISSUES

The Department of Health (DOH) notes the term "nonviolent adult and juvenile offenders" is not defined and could be interpreted to include a class of individuals beyond the intended scope. It is not clear if the term is intended to apply to those in jail, corrections, institutions, and facilities, or to all such individuals in the community at large, nor does it identify which offenses may fall into this category. The Children's Code (NMSA 1978, Sections 32A-1-1 through 32A-1-21) defines the terms "youthful offender" and "delinquent offender" but does not use or define the term "juvenile offender".

The term "behavioral health diagnoses" is also not defined and could include minor diagnoses that may be temporary or transitory as well as major mental illnesses.

DOH notes on page 2, line 17, the bill uses "individualized interventions" but does not define this term. At line 18, the bill indicates that the BHSD will "connect" the individuals that the proposed legislation is intended to impact with resources and services. The term "connect" is used as opposed to "refer." It is not clear whether the word "connect" places greater responsibility on BHSD than simply referring individuals to various resources.

DOH also notes HB160 conflicts with NMSA 1978, Section 32A-6A-7, which contains individual treatment planning requirements for children, by delegating part of that responsibility to BHSD. It also conflicts with other sections of the Children's Code that allow for treatment

providers to perform the tasks the bill would delegate to BHSD.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts notes national studies indicate that most inmates are in prison, at least in large part, because of substance abuse:

- 80 percent of offenders abuse drugs or alcohol.¹
- Nearly 50 percent of jail and prison inmates are clinically addicted.²
- Approximately 60 percent of individuals arrested for most types of crimes test positive for illicit drugs at arrest.³
- 60 to 80 percent of drug abusers commit a new crime (typically a drug-driven crime) after release from prison.⁴
- Approximately 95 percent return to drug abuse after release from prison.⁵
- On any given day, between 300,000 and 400,000 people with mental illnesses are incarcerated in jails and prisons across the United States, and more than 500,000 people with mental illnesses are under correctional control in the community.

The cost of untreated offenders cycling repeatedly through the criminal justice system amounts to billions of dollars annually. Appropriate treatment and support services can stop the revolving door of incarceration and save untold millions in New Mexico in avoided criminal justice and victimization costs.

The judicial branch operates drug and mental health court programs as part of the effort to address this population and partners with behavioral health entities on other treatment and service initiatives, but all those programs and initiatives are dependent on the treatment and ancillary services available in the community. The courts will benefit from any improvements in the state's behavioral health infrastructure through the reduction of repeat criminal activity by those with behavioral health issues.

¹Belenko & Peugh (1998). "Behind bars: Substance abuse and America's prison population." New York: Center on Addiction & Substance Abuse at Columbia University.

²Karberg & James (2005). "Substance dependence, abuse, and treatment of jail inmates," 2002. Washington, DC: Bureau of Justice Statistics, U.S. Dept. of Justice; Fazel *et al.* (2006). "Substance abuse and dependence in prisoners: A systematic review." Addiction, 101, 181-191.

³National Institute of Justice. (1999). "Annual report on drug use among adult and juvenile arrestees." Washington DC: U.S. Dept. of Justice.

⁴Langan & Levin (2002). "Recidivism of prisoners released in 1994." Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice; Spohn & Holleran (2002). "The effect of imprisonment on recidivism rates of felony offenders: A focus on drug offenders." Criminology, 40, 329-357.

⁵Hanlon *et al.* (1998). "The response of drug abuser parolees to a combination of treatment and intensive supervision." Prison Journal, 78, 31-44; Martin *et al.* (1999). "Three-year outcomes of therapeutic community treatment for drug-involved offenders in Delaware." Prison Journal, 79, 294-320; Nurco *et al.* (1991). "Recent research on the relationship between illicit drug use and crime." Behavioral Sciences & the Law, 9, 221-249.