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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Rehm/Szczepanski/Armstrong/Tallman **ORIGINAL DATE** 3/3/2023

BILL

SHORT TITLE Court-Ordered Drug or Health Treatment **NUMBER** House Bill 341

ANALYST Gray

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Treatment Costs	No fiscal impact	At least \$28,905.6	At least \$28,905.6	At least \$57,811.2	Recurring	General Fund
Treatment Benefits	No fiscal impact	At most (\$127,756.8)	At most (\$127,756.8)	At most (\$255,513.5)	Recurring	State, County, and Local General Funds
Total		(\$98,851.2)	(\$98,851.2)	(\$197,702.3)		

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to appropriation in General Appropriations Act

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Public Defender Department (PDD)

Administrative Office of the District Attorneys (AODA)

New Mexico Sentencing Commission (NMSC)

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of House Bill 341

House Bill 341 contemplates requiring judges to order an evaluation for drug, alcohol, or mental health treatment for all criminal defendants if it appears the defendant requires such treatment. If the evaluation substantiates the need for treatment, the court must order the individual to participate in treatment. That order may occur either during the pretrial period, while the case is pending, post-adjudication, or during any probation period.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The changes contemplated under HB341 is likely to have a significant operating budget impact on the justice system.

Cohort population. The Administrative Office of the Courts (AOC) notes that currently there are about 21,251 justice-involved individuals who would need to be evaluated, and, if needed, subsequently treated for drug, alcohol, or mental health conditions. This will be referred to as the cohort population. That total includes individuals on probation and parole and probationers under supervision of misdemeanor compliance programs.

Notably, this is a point in time count, and does not consider the total number of individuals who would be served over the course of a year. Further, this analysis is unable to estimate how many of the cohort population already receive treatment or other resources through treatment courts, diversion programs, and as coordinated by other agencies.

Cohort requiring evaluation and treatment. National research indicates a high proportion of justice-involved individuals have substance use disorders (SUDs), drug use disorders (DUDs), and alcohol use disorders (AUDs). Further, many individuals are under the influence of drugs or alcohol at the time of their crime. See *Significant Issues* for a detailed summary of that research.

AOC estimates that 85 percent of the cohort population would require evaluation for treatment and 60 percent of the cohort population. This means an estimated 18 thousand individuals would need to be evaluated and an estimated 12.7 thousand individuals would need to receive treatment.

Cost of evaluation. Regarding evaluation, a 2013 study found that the average evaluation for competency to stand trial cost an average of \$523 per person. Adjusting for inflation and adjusting for the lower costs required under HB341, it is estimated that it will cost \$330 per person per evaluation for a total cost of \$5.9 million.

Cost of treatment. HB341 does not clarify what government entity would be required to provide treatment or what type of treatment would be provided. AOC notes that a standard treatment dosage is about 12 weeks with three therapy sessions per week. Some individuals will require less while others require more, and that the cost to provide care will vary based on need.

This analysis relies on data from the New Mexico Results First Initiative to estimate the costs and benefits of incorporating treatment into the criminal justice system. That initiative provided the estimated costs and benefits of twenty programs related to SUDs, DUDs, AUDs, and mental health treatment in the justice system. Of those, nine programs are related to treatment required under HB341 and are outlined in substantive issues. The average cost per person for these nine treatments is about \$2,100, for a total estimated annual cost of \$26.7 million.

The bill does not direct what entity will be responsible for these costs, and this analysis does not attempt to predict how implementation would be made.

Benefits of treatment. Research has demonstrated the link between appropriate treatment for justice involved individuals and net benefits to government systems, including reduced recidivism, reduced health care costs, and reduced mortality. The New Mexico Results First Initiative estimates the direct benefits to taxpayers and the total benefits of administering certain programs, including those contemplated under HB341. The total estimated benefits per person is \$8,830, for a total estimated annual benefits of \$112.6 million.

Note that this assumes that programs to treat individuals is implemented immediately and according to national best practices. The benefits should be considered a ‘best case’ estimate. Readers should also note that these benefits are shared across government systems at both the state, county, and local level.

Current expenditures. The LFC program inventory of the New Mexico Corrections Department estimates that \$2.9 million is already spent administering treatment programs to about 600 individuals to address mental health conditions, SUDs, DUDs, and AUDs.

The General Appropriations Act includes a \$4 million appropriation to state courts for treatment courts and for needs screening.

SIGNIFICANT ISSUES

Some justice-involved individuals may benefit from the increased access to treatment contemplated under HB341, but such services must respect legal protections and be provided according to evidence-based standards. Based on agency analysis, the balancing of these priorities does not appear to be appropriately reached in HB341.

Research on SUD, OUD, and AUD in Justice System. AOC analysis notes that many people report having actively been using drugs or alcohol at the time of their arrest. National studies also show that between 58 percent and 68 percent of people in jail or prison meet the criteria for SUDs, and that 53 percent of that population have DUDs while 47 percent have AUDs.¹

According to the Bureau of Justice Statistics, more than half of those incarcerated in the U.S. have mental health issues. These individuals “are more likely to have previous convictions and to serve a lengthier sentence than those who do not have mental health needs.”²

Value of Treatment in Criminal Justice System. AOC analysis notes that “value of braiding behavioral health and criminal justice best practices has been demonstrated through the longstanding positive outcomes of interventions such as treatment courts.” A 2022 paper on evidence-based standards for substance related crimes notes that treatment courts improve outcomes “outcomes for drug-abusing offenders by combining evidence-based substance abuse treatment with strict behavioral accountability,” and that “Compared with self-initiated

¹ See Bronson et al., 2017 and James & Glaze, 2005.

² See National Conference of State Legislatures, “Addressing Mental Health in the Justice System,” 2015. <https://www.ncsl.org/civil-and-criminal-justice/addressing-mental-health-in-the-justice-system#:~:text=According%20to%20a%20report%20from,not%20have%20mental%20health%20needs>

treatment, outcomes are every bit as effective, and often more so, for persons who choose to enter and remain in treatment primarily or exclusively to avoid serious negative repercussions from their substance use, such as impending incarceration.”³

Risk-Needs-Responsivity Framework. Many national researchers support the risk-needs-responsivity (RNR) framework in the justice system. Screening for risk of recidivism or future crime is an essential component of the current system, and assessments can also provide insight into a person’s needed levels and types of treatment required. The RNR framework lastly puts the onus on the system to be responsive both to a person’s risks but also their needs. Under current practice, risk is commonly evaluated and addressed while needs are not. AOC notes that responsivity is also related to “timing and sequencing of rehabilitation services. For example, addressing housing or food insecurity, mental health issues, and other stabilization needs (such as cravings and/or acute withdrawal symptoms, etc.) should be considered before some of the criminogenic needs that typically receive most of the attention. These responsivity needs, sometimes called stability needs allow for the other interventions to take root.”

The General Appropriations Act includes a \$4 million appropriation to state courts for treatment courts and for needs screening.

Compulsory Treatment Raises Concerns. Analysis from the Public Defender Department (PDD) raises concerns about the mandatory nature of the bill.

The analysis writes:

The bill proposes to place the ultimate decision-making authority in the hands of a non-judicial evaluator, to whose assessment a *district judge* must entirely defer. Judicial discretion is a cornerstone of our legal system and the ultimate decision about whether and to what extent to order treatment should lie in the hands of a duly elected judge.

PDD also notes that the bill may raise constitutional questions because it is unclear whether involuntary “treatment” would constitute pretrial detention. If so, the state would carry the associated burden to prove by clear and convincing evidence that (1) the defendant poses a future threat to others or the community, and (2) no conditions of release will reasonably protect the safety of another person or the community,” pursuant to *State v. Mascareno-Haidle*, 2022-NMSC-015, ¶ 27, 514 P.3d 454.

AOC analysis notes that requiring treatment as a condition of liberty is not a nationally accepted best practice and may increase the likelihood a person with health needs will violate their probation conditions thereby “indirectly criminaliz[ing] behavioral health needs.”

AOC notes that, beyond the due process and human rights concerns, compulsory treatment offers questionable therapeutic benefits. AOC asserts that the system should incentivize participation, not mandate participation. Citing a 2022 paper, AOC notes:

Compulsory treatment offers questionable therapeutic benefits and raises serious concerns about potential due process or human rights violations. Leveraged treatment raises far fewer due process concerns because participants are given the choice (albeit a difficult choice), often with the assistance of counsel, whether to choose treatment or to

³ Behavioral Responsivity: Toward Evidence-Based Practice Standards For Substance-Related Crime, Doug Marlowe, 2022

proceed as usual with case adjudication.⁴

The mandatory nature of services raises additional concerns related to service capacity and capability.

AOC notes:

HB341 would require courts to mandate services that may not be available to defendants. There are many jurisdictions where inpatient levels of care may not be available and, even with the advent of teleservices, there are areas in New Mexico where ongoing treatment services are deficient. The availability of culturally and linguistically appropriate services may also create an additional burden for individuals and communities should treatment be mandated through the court. Whether noncompliance under these conditions would be considered a violation of conditions of release or probation is not addressed in HB341.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The General Appropriations Act includes a \$4 million appropriation to state courts for treatment courts and for screening, including screening for needs.

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⁴ Behavioral Responsivity: Toward Evidence-Based Practice Standards For Substance-Related Crime, Doug Marlowe, 2022