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FISCAL IMPACT REPORT

SPONSOR: Robinson DATE TYPED: 02/23/01 HB _____
 SHORT TITLE: Bench Warrants SB 498
 ANALYST: Hayes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		\$ 50.0	\$ 50.0	Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01*	FY02			
\$ (300.0)	\$ (900.0)	\$ indeterminate	Recurring	General Fund
\$ (400.0)	\$ (1,100.0)	\$ indeterminate	Recurring	Various Funds

(Parenthesis () Indicate Revenue Decreases)

Relates to SB501

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 Public Defender Department (PDD)
 LFC budget files

SUMMARY

Synopsis of Bill

Section 1. SB498 proposes new statutory language that conditions the issuance of bench warrants by magistrate courts on the mailing of a *Notice of intent to issue a warrant* to the last known address of the individual to be arrested, and allows that individual thirty days after the notice to file a motion to contest the issuance of the warrant.

Section 2. This section proposes that no efforts should be made to collect the \$100 warrant fee from the estate of an individual who dies before the warrant can be served.

Section 3. A temporary provision would be enacted in SB498 which provides amnesty for individuals who have not been served with warrants issued prior to January 1, 2001, meaning no fee will be assessed.

In sum, the amnesty provisions may clear a backlog of warrants. Moreover, the requirement to issue a *Notice of intent* may reduce the number of warrants that have to be served by law enforcement.

Significant Issues

- A. **Thirty-day Notice.** The thirty-day notice requirement in Section 1 of this bill is already standard practice in magistrate courts in the case of a bench warrant for failure to pay. In cases where a defendant fails to appear, judges issue an *Order to Show Cause* ordering the defendant to appear. Then, judges only issue warrants if the defendant fails to appear at the Show Cause hearing.
- B. **Non-enforcement of Warrant After Death.** According to the AOC, the Magistrate Court Administrative Procedure manual includes a new section on dealing with debts owed by deceased defendants. It enables clerks to stop any collection procedures on such parties one year after the date of death when proof of death has been sent to the court. Article IV, Section 32 of the Constitution of the State of New Mexico prohibits the forgiveness of debts owed to the state, so these debts remain on state records but in a category which defines them as “uncollectible.”
- C. **Amnesty for Prior Warrants.** Section 3 of this bill would make every outstanding warrant in the magistrate court system issued prior to January 1, 2001 unenforceable and, therefore, uncollectible. Estimates are that approximately 30,000 outstanding bench warrants would be canceled.
 - c There is a constitutional question whether or not these warrants can be forgiven. This bill’s language states that a bench warrant issued prior to January 1, 2001 is “unenforceable” and that no fees “shall be collected if the warrant is unenforceable.” Therefore, it does not specifically say the debt is forgiven, despite the bill’s language calling for “amnesty for prior warrants.” It appears the bill is attempting to bypass the constitutional issues by framing it with warrant “unenforceability” language.
 - c Thousands of bench warrants are issued by magistrate courts throughout New Mexico for various crimes; from misdemeanors to aggravated DWI, or driving without a license to battery on a household member. A substantial number of bench warrants issued result from traffic violations and criminal cases initiated by police officers or other law enforcement agencies. According to the magistrate court director, many of these outstanding warrants are for fugitives on felony warrants. Oftentimes, it is directly *because of the bench warrant that the felon is arrested*. This bill proposes dismissing those warrants. Apart from revenue, this is one of the most serious implications of SB498.
 - c Bench warrants issued by magistrate court are returned to the requesting agency for entry into New Mexico Criminal Information Center (NMCIC). When a warrant is canceled by the court, it must also be canceled from MNCIC by the request-

ing/originating agency (ORI). Bench warrants requested by State Police officers and issued by the court are entered into NMCIC by civilian personnel, usually by police radio dispatchers. This process, although not lengthy, requires the ORI to comply with strict guidelines to ensure accuracy of the NMCIC network which is statewide and accessible by all law enforcement agencies.

Passage of this bill would require canceling thousands of warrants, would negatively affect revenue and would require an intense workload, overtime and massive coordination by numerous agencies.

- c Without any outstanding warrants to enforce except for those accrued in 2001, there would be no need for the Warrant Enforcement Program. The program was specifically created to enforce outstanding bench warrants and to collect outstanding fees, fines and costs in the magistrate courts so they may uphold judicial integrity. Without having enforceable outstanding warrants, the purpose for existence of the program is eliminated.

FISCAL IMPLICATIONS

Given that there is no effective date on this bill nor an emergency clause, the assumptions in this fiscal analysis are based on the amnesty date of “prior to January 1, 2001” as stated in the bill.

Currently, there are approximately 30,000 outstanding bench warrants throughout the state. The outstanding debt of those 30,000 is estimated to be \$8.0 million. Granted, the entire \$8.0 million may not collectible; however, the amount reflects the total debt accrued on state records. If this bill is enacted as written, that \$8.0 million debt would be cleared from the books.

For the past three fiscal years, the magistrate Warrant Enforcement Program has collected approximately \$2.8 million each year on the debt; that is, on outstanding bench warrants. Approximately 25% (\$700.0) of the fines and fees go directly to the general fund; another 25% is deposited into ten different funds. The remaining 50%, or \$1.4 million, is collected from assessed bench warrant fees and is used to fund the program itself. By eliminating outstanding warrants prior to January 1, 2001, it is estimated that \$2.0 million in fee revenue would be lost each fiscal year (see revenue table on page 1).

Passage of this bill would eliminate the source of revenue which supports the Warrant Enforcement Program. Secondly, since NMFA bond-related funds such as the Magistrate Metropolitan Court Capital Fund and the Supreme Court Automation Fund are funded by revenue collected from this program, those funds would be negatively affected. Thirdly, the Tax Refund Intercept Program (TRIP) would also be affected by this legislation. All cases with a warrant status are submitted to the Department of Taxation and Revenue through TRIP, regardless of the age of the case. TRIP brings in additional \$150.0 per year of unpaid fines and fees as a result of the Warrant Enforcement Program.

RELATIONSHIP

SB501 also addresses bench warrants and contains the same amnesty provision as SB498.

TECHNICAL ISSUES

The EFFECTIVE DATE of the provisions of this act needs to be specified, or the bill needs to “declare an emergency” for its implementation.

OTHER SUBSTANTIVE ISSUES

In the short-term, funding for overtime may be needed by law enforcement agencies and the courts in order to implement the requirements of SB498 to cancel thousands of bench warrants. (Note the \$50.0 in the appropriation table on page 1. It is for either FY01 or FY02, depending on the effective date of this bill. The \$50.0 is a minimum estimated amount needed to pay for the overtime that will be required to cancel 30,000 bench warrants.)

In addition, the bill would reduce the number of warrants that need to be served, thereby reducing the time and effort exerted for arrests and collections.

In the long-term, pre-2001 warrants that were not canceled or accidentally missed could place law enforcement officers in a position to be the subject of Tort Claim Notices by people who are falsely arrested on an invalid warrant.

CMH/ar