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FISCAL IMPACT REPORT

ORIGINAL DATE 1-31-09

SPONSOR Maestas LAST UPDATED _____ HB 431

SHORT TITLE Law Enforcement Information Collection SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 431 proposes a new section be added to Chapter 29 NMSA 1978 entitled: Collection of Information Prohibited – Exceptions – Oversight—Civil Liability.

Law enforcement agencies will be prohibited from *collection*, maintaining or sharing with any other law enforcement agency information about the political, religious or social views or activities of a person with the following *exceptions*: the information relates to an investigation of criminal conduct or there are reasonable grounds to believe that the person is involved in criminal conduct. Such information collected about a person’s views or activities will be

destroyed if the person is not charge with a crime in a reasonable time or if a charge results in a dismissal, nolle prosequi or a acquittal; or if the information was collected or maintained in violation of the above-stated prohibition.

Oversight will be maintained by requiring law enforcement agencies to establish and enforce written policies governing collection, maintenance and destruction of information per the above. Law enforcement agencies will also be required to provide an annual report to the Attorney General describing: information regarding political, religious or social associations, views or activities of a person collected, maintained or shared; the reasons for collecting or maintaining the information; the alleged criminal conduct to which the information relates; and the grounds for believing the person is involved in criminal conduct. The Attorney General shall have access to related files and records of the law enforcement agency and will oversee and monitor compliance. The Attorney General may also investigate citizen complaints regarding the collection, maintenance and sharing of such information.

HB 431 permits a person to bring **civil action** again a law enforcement agency that collects, maintains or shares information about the person in violation of the stipulations above for actual damages; a civil penalty not to exceed \$10,00; punitive damages if the agency engages in a pattern of willful or reckless violation; and costs of the action and reasonable attorney fees.

This new section of Chapter 29 NMSA 1978 will apply to a law enforcement agency and its elected officials, officers and employees whether the investigation or prosecution is conducted in coordination with other agencies or jurisdictions or whether the officers or employees are cross-deputized to assist other jurisdictions.

FISCAL IMPLICATIONS

According to the Administrative Office of the District Attorneys, the costs of implementing this bill will impact every law enforcement agency, every prosecutor's office that uses investigators, every state agency which uses investigators, because it requires specified data collection, tracking, reporting, as well as destruction of information. Given the amount of data that comes into police agencies in the form of intelligence reports, crimestoppers tips, and other legitimate police work, keeping track of this would likely require at least one full time staff person for every small agency, and multiple staffers as well as perhaps specialized data tracking software for the medium to larger agencies. At the same time, it would render useless the costly statewide/nationwide deconfliction and intelligence systems that have been in place, as they often relate associations and other information—as much as possible—that is used in tracking potential offenders, determining their alliances in an effort to intercept criminal activity, and identifying the extent of gang membership and activity. Other costs can be significant because the statute is vague in how the information must be destroyed and the amount of time in which a criminal charge can be brought before information has to be destroyed. In cases where a person is suspected of gang related activities, such files might be kept for a long time to try to prosecute the criminal enterprise that person is engaged in. This bill creates a potential for very costly lawsuits and includes punitive damages.

SIGNIFICANT ISSUES

The district attorneys explain that law enforcement oftentimes is engaged in long term, undercover or routine investigations that require gathering as much data as possible on suspects,

especially regarding gang members, drug cartel operations and movements, and long term racketeering and white collar crimes. The data may end up being useful for some but not all of the people investigated, but because it takes time to develop some cases, there is never quite a time when an investigation can be deemed “finished” to the exclusion of the use of all the information collected. And, crimes such as unsolved homicides, which have no statute of limitations, require gathering of every kind of information on a variety of people in order to try to determine a suspect.

This legislation would completely interfere with and gut good investigative practices. If the concern is to keep some bad officer from, say, running an NCIC check or investigating a person for private purposes, there are already rules and procedures, at the very least administrative procedures within police agencies, that would already provide remedies for this. This bill is extreme, damaging, and will create an incredible cost to the state and to local communities.

The Public Defender Department suggests that enactment of the bill may alleviate potential problems implicating the First Amendment’s right of association. The bill would prohibit criminal investigations and the compilation of the names of individuals and groups based solely upon political, social or religious activities and beliefs, absent articulable suspicion of criminal activity.

Further, adds the PDD, it would establish oversight and accountability to ensure law enforcement activities are related to legitimate law enforcement purposes; ensure that criminal intelligence files contain only accurate and relevant information; and ensure that only accurate and relevant criminal intelligence information is disseminated to national security and other law enforcement agencies.

ADMINISTRATIVE IMPLICATIONS

“The proposed legislation,” expresses the district attorneys, “is unworkable and will seriously cripple law enforcement activities, creating great loopholes for offenders to escape prosecution.”

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts notes that this bill complements HB 428, Provisions of Profiling Practices Act, and is consistent with legislation in many states.

It also adds that a similar bill in Colorado was summarized as follows: “Prohibits the collection, maintenance, and distribution of information on individuals or groups by a law enforcement agency unless the information relates directly to serious criminal conduct and there is probable cause to find that the subject of the information is or may be involved in serious criminal conduct.”

The collection, maintenance and sharing of such information (religious, social views and actions) is of heightened concern due to post-9/11 intelligence concerns. One element of successful policies and procedures, which is missing from HB 428, is regular training of law enforcement personnel regarding these policies and their theoretical underpinnings. The Criminal Justice Institute and the National Association of Black Law Enforcement Executives note training as a key element to support such laws.