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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/13

SPONSOR Ezzell LAST UPDATED 03/11/13 HB 301/aHCPAC/aHFI#1

SHORT TITLE Domestic Disturbance Definitions SB \_\_\_\_\_

ANALYST Chenier

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		(Minimal)	(Minimal)	(Minimal)	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)  
 Attorney General’s Office (AGO)  
 New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of HFI Amendment #1

House Floor Amendment #1 changes the definition of “household member” to include “parent-in-law”, “grandparent”, “grandparent-in-law”, and “a co-parent of a child or a person with whom a person has had a dating relationship or an intimate relationship”. The amended definition removes “family member, including a relative”.

#### Synopsis of HCPAC Amendment

The Senate Consumer and Public Affairs Committee amendment strikes “means” and inserts “includes but is not limited to”, expanding the scope of the definition for “domestic abuse”.

#### Synopsis of Original Bill

House Bill 301 (HB 301) would add Section D to NMSA 1978, Section 31-7-1 expanding the definition of “scene” for purposes of arrest without a warrant after a “domestic disturbance.”

Section D(b) would allow for a warrantless arrest outside of the actual location if (1) an arrest has been made with reasonable promptness after the domestic disturbance; (2) domestic abuse is suspected to have been part of the domestic disturbance; and (3) the arrest is reasonably necessary to protect a household member from domestic abuse occurring after the domestic disturbance.

HB 301 would also add Section D(2) to define “domestic abuse” as an incident by one household member against another household member resulting in: (a) physical harm; (b) severe emotional distress; (c) threat causing imminent fear of physical harm by any household member; (d) criminal trespass; (e) criminal damage to property; (f) stalking or aggravated stalking; (g) harassment. The bill also moves the definition of “household member” from section A to the newly created Section D.

### **FISCAL IMPLICATIONS**

The proposed bill has potential positive fiscal implications on the DPS in that recent case law has created a situation where additional time on scene and additional follow-up time are required by peace officers in order to protect victims of domestic violence.

While it is likely that the PDD would be able to absorb some new cases under the proposed law, any increase in the number of prosecutions will bring a concomitant need for an increase in indigent defense funding.

### **SIGNIFICANT ISSUES**

The DPS provided the following:

The most significant issue presented by HB 301 is a fix for issues related to State vs. Daniel Almanzar. The Opinion negated the practice of arresting individuals accused of committing domestic violence, which were not technically “at the scene.” Although numerous opinions in the past had extended “at the scene”, and provided various definitions and levels of guidance, the Almanzar Decision squarely stated that “at the scene” can only mean “at the scene”, and an arrest cannot be affected any other place. Additionally, the opinion states, had the Legislature intended, they would have created some additional definitional structure to extend that further in time and space from the actual event. It is apparent that HB 301 is necessary to allow for appropriate arrests to be made in order to protect victims of domestic violence.

The AGO provided the following:

Law enforcement agencies and prosecutorial agencies have long considered “at the scene” to mean a variety of circumstances, not limited to the physical location at which the abuser abused, hit or injured the victim. Generally, police officers go to the location of the complaining victim, which may be at a safe location, not at the original scene of the crime, such as the home of the victim’s parents. The police would then attempt to locate the accused within the time frames of the police shift, or within the next few hours. Otherwise, the victim and others such as children, would be required to remain in the danger zone until police arrived, placing everybody at risk for more abuse.

In *State v Almanzar*, the domestic violence incident occurred at Tingley Coliseum. The victim called the police and was located at a nearby Walgreens. The police located the accused at a nearby Circle K. During the pat down of the accused police found cocaine. Defendant was charged with possession of cocaine, a felony. Domestic violence charges were not filed, unknown reason. However, the officer testified that had he not found the cocaine, he would have arrested the defendant for domestic battery. The defendant moved to suppress the evidence of cocaine. The District Court denied the defendant's motion.

The Court of Appeals suppressed the cocaine, noting that the arrest was improper because NMSA 31-1-7(A) does not authorize an officer to make a warrantless arrest of a suspect at another location away from the scene of a domestic disturbance.”

This ruling has caused great concern among domestic violence prevention agencies and concern by law enforcement. Although the intent of the ruling was to suppress the cocaine, the ruling actually impacted domestic violence cases in a broad and counter-productive way. The New Mexico Supreme Court has granted certiorari on November 5, 2012.

Section D. (1) of the proposed bill is intended to amend the law to give a reasonable range of arrest potential to law enforcement. In reality, the proposed amendment codifies the procedure already used by many law enforcement agencies for several years, a procedure encouraged and promulgated by prosecutors and domestic violence prevention entities.

See Attorney General Opinion 05-05, Patricia Madrid by Arthur Pepin, Director of Criminal Appeals. “Although a legislative change to make the law even clearer would be helpful, the arrest authority as provided in current law appears to be limited by what is reasonable under the circumstances.”

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

The DPS provided the following:

If this bill is not passed, then the holding in *State vs. Almanzar* will continue in full force and affect, and arrests for domestic violence can only be made “at the scene”. This will likely result in further domestic violence being perpetrated on victims, as police officers cannot always be with the victim, and once an offender has left the “scene”, then a peace officer would need to obtain a warrant in order to arrest that individual.

EC/svb:blm