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FISCAL IMPACT REPORT

SPONSOR Fajardo ORIGINAL DATE 02/24/15
 LAST UPDATED 03/18/15 HB 462/aHJC

SHORT TITLE Domestic Disturbance Warrantless Arrests SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate but Minimal	Indeterminate but Minimal		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 408 Domestic Violence Predominant Aggressor
 Conflicts with HB 497 Household Member Definition in Several Acts

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Office of the Attorney General (AGO)
- Public Defender Department (PDD)
- NM Corrections Department (NMCD)

SUMMARY

Synopsis of HJC Amendment

House Judiciary Amendment to House Bill 462 makes one change to the bill. It specifies that any arrest without a warrant for a domestic disturbance must not only occur with reasonable promptness but also “not to exceed twenty-four hours” after the disturbance. This will assure that arrests are conducted within a specific time period after the domestic disturbance.

Synopsis of Original Bill

House Bill 462 amends Section 31-1-7 NMSA 1978 of the Criminal Procedure Act, which addresses warrantless arrests in domestic disturbance cases.

As currently written, that section allows a warrantless arrest if the officer has probable cause to believe that the person has committed an assault or a battery upon a household member and the

officer is at the scene of a domestic disturbance.

HB462 allows the arrest to occur at the scene of a domestic disturbance or “at another location if the arrest is made with reasonable promptness after the domestic disturbance and is reasonably necessary to protect a household member from future domestic abuse.”

HB462 also adds subsection D to Section 31-1-7, to contain definitions of terms used in the Section. It moves the definition of “household member” from its current location in subsection A to the new definition section. It defines “domestic abuse” to have the same meaning as used in the Family Violence Protection Act.

FISCAL IMPLICATIONS

HB 462 carries no appropriation and has indeterminate but minimal fiscal impact on the agencies responding.

AODA notes: “It is possible that allowing prompt warrantless arrests in domestic disturbance cases when it is reasonably necessary to protect the victim will reduce the escalation of violence in domestic disturbance cases, which may result in lower costs to the district attorneys.”

NMCD states: “Minimal if none.”

SIGNIFICANT ISSUES

AODA analysis states that:

By allowing the police to make a prompt, warrantless arrest in a domestic disturbance case when the arrest is “reasonably necessary” to protect a household member from future domestic abuse, regardless of the physical location of the aggressor, HB 462 gives the police a valuable tool for defusing volatile and potentially violent situations.

As currently written, Section 31-1-7 imposes a geographic requirement on warrantless arrests in domestic disturbance cases: a warrantless arrest can occur only when the officer “is at the scene of the domestic disturbance.”

The New Mexico Supreme Court has interpreted that language to allow warrantless arrests “anywhere near in space and time from where and when the incident occurred.” (State v. Almanzar, 2014-NMSC-001.):

We infer that the Legislature used the language “at the scene” to strike a reasonable balance between preventing harm to the victim and protecting the rights of the accused. If the police arrive at the scene of a domestic disturbance within a reasonable time after the violence is alleged to have occurred, such that the evidence of the violence is still fresh, and if the aggressor is still physically close enough to the victim to be able to reinstate violence, then Section 31–1–7(A) empowers law enforcement to incapacitate the aggressor and protect the victim by making a warrantless arrest.

This bill codifies the Supreme Court’s interpretation of the statute.

NMCD analysis states that “The bill is needed to better protect domestic violence victims, and to prevent peace officers from facing criminal or civil liability for making the designated domestic violence or abuse-related warrantless arrests.”

CONFLICT/RELATIONSHIP

Conflicts with HB 497 Household Member Definition in Several Acts as follows:

- The amendments of HB 497 result in a different definition of “household member” in Section 31-1-7 (adds grandparent language) than results from HB 462.

In HB 497, the term remains in Section 31-1-7(A) as: “a spouse, former spouse, [~~family member, including a relative~~] parent, present or former stepparent, present or former [~~in-law, child or~~] parent-in-law, grandparent, grandparent-in-law, co-parent of a child or a person with whom the victim has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section. ”

- HB 462 in Section D defines “household member” as “a spouse, former spouse, family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, or a person with whom the victim has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section.”

Also relates to SB 408 Domestic Violence Predominant Aggressor that requires officers responding to domestic violence calls to determine the predominant aggressor.

AMENDMENTS

The definition of “household member” should be the same in The Crimes Against Household Members Act, The Family Violence Protection Act And The Criminal Procedure Act, as attempted by HB 497, noted above as conflicting with HB 462.

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