

INVESTIGATE CERTAIN LAW ENFORCEMENT OFFICERS, Stewart Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

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FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR Stewart **LAST UPDATED** 02/02/15 **HB** _____

SHORT TITLE Investigate Certain Law Enforcement Officers **SB** 147

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate, possibly significant	Indeterminate, possibly significant		Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)
 Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 147 makes technical changes to the duties of the attorney general listed in Sec. 8-5-2 NMSA 1978.

SB 147 adds a new section requiring the attorney general to investigate or prosecute when a "law enforcement officer is suspected of a violent felony as defined in the Criminal Sentencing Act, assault against a household member, abuse of a child or any crime for which registration under the Sex Offender Registration and Notification Act is required."

FISCAL IMPLICATIONS

SB 147 carries no appropriation. The additional impact on operating budgets of affected agencies is indeterminate, but impact on the AGO could be significant.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

AOC is currently working on possible parameters to measure resulting case increase. Under Sec. 8-5-3, the cost of attorney general investigations shall be paid out of the general fund of the county wherein such investigation shall have been made and the costs of any prosecution arising out of such investigation shall be paid as are the costs in cases prosecuted by district attorneys.

SIGNIFICANT ISSUES

The bill requires the Attorney General's Office to undertake investigation or prosecution of a law enforcement officer when the officer is suspected of any violent felony, assault against a household member, abuse of a child or any crime for which registration under the Sex Offender Registration and Notification Act is required.

The overriding issue with the addition of subsection (B) as drafted in SB 147 is that it mandates that the Attorney General's Office is the sole agency allowed to investigate and prosecute violent crimes committed by any law enforcement officer in any agency thorough the state where the law enforcement officer is suspected of committing a crime.

Under Sec. 8-5-3 NMSA 1978, the attorney general is authorized to act on behalf of a county, state or any department thereof, if after a thorough investigation, such action is ascertained to be advisable by the attorney general after a district attorney has failed or refused to act in any criminal or civil case or matter in which the county, state or any department thereof is a party or has an interest. This has provided local jurisdictions with a right of first refusal on all prosecutions. The new duty added by SB 147 creates a specific class of situations for which attorney general action is mandatory as compared to the discretionary authority of Sec. 8-5-3 NMSA 1978. Local prosecutors will not have a right of first refusal regardless of whether the local prosecutors are ready, willing, and able to proceed.

AGO analysis states:

This language is over-broad and usurps the authority of the elected district attorneys, local law enforcement, and state police who are uniquely trained and equipped to respond to these critical cases within their local jurisdictions. Moreover, there is no provision providing for the assistance of these agencies in these critical investigations, nor does the Attorney General's office have investigators housed in every jurisdiction throughout the state, making successful first responding and initial evidence preservation, gathering, and response impossibility.

Cases of a violent nature enumerated in SB 147 require immediate response, gathering of initial statements, and preservation of initial evidence at the onset which is a critical stage in the investigation; waiting for investigators to be dispatched from a location which could be a travel distance of a whole day away compromises the integrity of an investigation and the ultimate success of a subsequent prosecution.

If this bill were enacted, there is a high likelihood that critical evidence and statements would be lost thereby compromising successful prosecutions – thereby achieving the opposite result intended.

Further, AGO analysis suggests a lack of clarity regarding which crimes would be covered by SB 147, if enacted:

Assault against a household member is a petty misdemeanor (Section 30-3-12 NMSA 1978). Many of the other crimes listed in Subsection B are 1st and 2nd degree felonies. As currently drafted, it is unclear if the act was meant to include all crimes of domestic violence or only assault against a household member. There are intrinsic ambiguities in delineating specific crimes within the bill, however as written it appears to exclude other crimes against a household member under the Crimes Against Household Members Act, and other crimes not specifically named but associated with domestic violence such as Violation of an Order of Protection, Aggravated Stalking, Stalking, Harassment, Criminal Damage to Property. Because of the inherent danger and risk to victims of domestic violence, lack of initial response and immediate investigation compromises victim safety.

There is considerable ambiguity in what crimes the bill contemplates because the list is not specific or exhaustive. Moreover, initial responders will be confused by the lack of clarification and will question their authority to respond, intervene, or offer any assistance at the critical stages.

DPS analysis concurs:

The most significant issue relating to this bill is that it is unclear how peace officers will handle an investigation meeting the criteria when the subject of the investigation is a law enforcement officer. Under what circumstances, and by what process, would the investigation be conducted by the Attorney General's Office vs. the law enforcement agency? It is unclear as to whether the investigations be concurrent, cooperative or how it would be determined whether the Attorney General's Office or the law enforcement agency performs the investigation.

Another potential conflict could arise as this bill would appear to circumvent the statutory authority of the District Attorney, the elected chief law enforcement officer in the judicial district, to prosecute officers charged with the identified crimes.

ADMINISTRATIVE IMPLICATIONS

As drafted, SB 147 requires the AG to investigate or prosecute a law enforcement officer that is suspected of committing a number of crimes. Because the consequences are so grave for the law enforcement officer, these cases may often result in lengthy and costly litigation. The act provides no appropriation for the additional staff, satellite offices, mobile crime units, and training, which would highly impact the agency's other performance based budget targets.

TECHNICAL ISSUES

As the bill is currently drafted, the Attorney General is tasked with investigating or prosecuting. The language might be interpreted to give the Attorney General an option of investigating but

not prosecuting, or prosecuting but not investigating.

OTHER SUBSTANTIVE ISSUES

According to NMSC analysis, Connecticut appears to be the only state that has a statute that allows the Attorney General's Office to prosecute Law Enforcement Officials specifically for the use of deadly force cases. [Ch.886 Sec 51-277a](#).

Another resource is a [Federation of American Scientists Congressional Research Service article on Special Prosecutors: Investigations and Prosecutions of Police Use of Deadly Force](#), which summarizes different methods for investigating and prosecuting cases involving alleged crimes by law enforcement officers.

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