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FISCAL IMPACT REPORT

ORIGINAL DATE 2/24/15

SPONSOR Martinez LAST UPDATED _____ HB _____

SHORT TITLE SWAT Deployment Annual Reporting SB 567

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|----------------------------|----------------------------|----------------------------|------------------------------|------------------|
| Total | | See Fiscal Implications | See Fiscal Implications | See Fiscal Implications | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Municipal League (NMML)
Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

This bill enacts a new section of law requiring law enforcement agencies with special weapons and tactics teams or similar law units to annually file a report with the secretary of DPS. The report will include all deployments for the previous calendar year; shall be filed every year on or before May 1st of that year; the purpose for each deployment; whether that purpose was upheld; the location of deployment, and number of arrests made; whether a forced entrance was made; whether any member of the team discharged a weapon; whether any person or animal was injured or killed; types of weapons deployed; and, the race, sex, and age of each individual encountered in the course of a team deployment, whether as a suspect or bystander; and whether any controlled substances, contraband or evidence of criminal activity was found.

FISCAL IMPLICATIONS

DPS stated that there will be a fiscal impact on DPS as a result of this bill due to existing personnel given this task in addition to their current assignments. Collection and storage either in hard copy or digital format will also be an added expense. Further, it is reasonable to expect an increase in requests for public information on the information gathered, which will further divert existing resources.

Other law enforcement agencies would have a fiscal impact related to the collection of data and filing the reports. The magnitude of this additional cost is unknown.

SIGNIFICANT ISSUES

DPS provided the following:

Many state or local law enforcement agencies engage in activities that could be defined as SWAT related tactics but they may not have a formal team allowing for them to be exempt from the reporting requirements. Several LE agencies in the state may also “team up” to form a regional SWAT team on an as needed basis, creating the question as to which agency would be required to fulfill the reporting requirement.

“Imminent threat” is not defined in the bill and each deployment is unique with its own set of circumstances. A deployment could include a self-inflicted threat by an individual that could instantaneously turn into a threat to the community. Some deployments could also involve the service of a high risk search or arrest warrant but not include an identified imminent threat. However, the circumstances of the situation would still dictate the deployment of a SWAT team.

The bill further requires the reporting agency to identify whether the determination that the situation for which the SWAT team was deployed was ultimately upheld. Justification can be subjective and dependent upon who is making the evaluation. If the reporting agency is required to make this determination it is reasonable to believe, if they utilized a vetting system on the front end of the deployment, that every instance would be upheld.

Lastly, in SWAT deployments in which deadly force is used, the incidents are investigated criminally either by the agency involved or an outside agency. The legal justification is made by the local district attorney and their established protocol for review. The incidents are also often examined by the agency’s internal affairs department or litigated via civil court proceedings, not to mention if the US Department of Justice (DOJ) is involved. Having a local or state LE agency decide if their SWAT deployment was ultimately upheld or justified could be in conflict with the other established vetting procedures.

It’s also reasonable to believe various political subdivisions may not want or be willing to disclose or report on their SWAT deployments to DPS due to a conflict of interest.

EC/je