

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.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/16
LAST UPDATED 2/5/16 **HB** 86/aHRPAC/aHJC
SPONSOR Fajardo
SHORT TITLE Domestic Violence Warrantless Arrests **SB** _____
ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 Public Defender Department (PDD)

SUMMARY

Synopsis of HRPAC Amendment

House Judiciary Committee amendment to House Regulatory and Public Affairs Committee amendment to House Bill 86 removes “family member, including relative” and “in-law” and inserts “parent-in-law, grandparent and grandparent-in-law”, and adds “stepchild and grandchild” to the list of individuals considered a household member. The definition is the same as in the Crimes Against Household Members Act and the Family Violence Act as suggested by PDD, AOC and the AGO.

Synopsis of HRPAC Amendment

The House Regulatory and Public Affairs Committee amendment to House Bill 86 changes the meaning of reasonable promptness from twenty-four hours to ten hours.

Synopsis of Bill

House Bill 86 proposes to amend Section 31-1-7 NMSA 1978 of the Criminal Procedure Act, which addresses warrantless arrests in domestic disturbance cases.

HB 86 allows the arrest to occur at the scene of a domestic disturbance or “at another location if the arrest is made with reasonable promptness (within twenty-four hours) after a peace officer is summoned to the domestic disturbance” and the arrest is reasonably necessary to protect a household member from future domestic abuse.

HB 86 adds a definition of “household member” that makes cohabitation not necessary to be considered a household member. It also aligns the definition of “domestic abuse” with meaning used in the Family Violence Protection Act.

FISCAL IMPLICATIONS

The fiscal impacts of HB 86 are difficult to determine but are estimated to be minimal by all the responding agencies.

SIGNIFICANT ISSUES

The change in the HRPAC amendment may address the issue raised by PDD in its response to HB 86.

The PDD and AOC cite *State v. Almanzar*, 2014-NMSC-001; 316 P.3d 183 in which the court reaffirmed that officers can make a warrantless arrest in misdemeanor assault or battery upon a household member cases. It also held that “defendant’s arrest was lawful because it was reasonably close in proximity to where the domestic violence took place”.

HB 86 clarifies some ambiguities created by the *Almanzar* decision by replacing “at the scene” with “the arrest occurs at the scene of a domestic disturbance or at another location if the arrest is made with reasonable promptness after the domestic disturbance”. The bill also defines reasonable promptness as “occurring within twenty-four hours after a peace officer is summoned to the scene of the domestic disturbance in question.”

According to PDD, because an arrest is an extraordinary intrusion upon the personal rights of the individual, it is traditionally exercised without warrant only when the activity observed or believed to have occurred poses an extraordinary threat to public safety, i.e., a felony. In order to lawfully arrest an individual for a misdemeanor, a police officer must have a warrant, unless the misdemeanor was committed in the officer’s presence. See *City of Las Cruces v. Sanchez*, 2009-NMSC-026, ¶ 11, 146 N.M. 315, 210 P.3d 212 (“[I]n New Mexico, an officer may execute a warrantless misdemeanor arrest only if the offense was committed in the officer’s presence.”). Section 31-1-7(A) creates an exception to this general rule for misdemeanor domestic disturbances. Allowing for warrantless arrests for misdemeanor domestic disturbance on a showing of probable cause up to twenty-four hours after the alleged incident occurs, raises serious constitutional issues which are likely to be challenged by the defense bar in trial and on appeal.

PPD cites a survey of warrantless arrest statutes in all 50 states and the District of Columbia, which shows that twenty-two states include a time limit by which police must make an arrest to do so without a warrant. April M. Zeoli, Alexis Norris & Hannah Brenner, *A Summary and Analysis of Warrantless Arrest Statutes for Domestic Violence in the United States*, 26 J. Interpersonal Violence 2811 (2011). Time limits for arrest are often a specified number of hours after the domestic violence incident, with the window of opportunity closing anywhere from four hours after the incident (Arkansas and Washington) to allowing warrantless arrest if a police report was made within 28 days of the incident (Wisconsin). In some statutes, the time limit is seemingly more subjective; for example, California law states that police officers may arrest if they do so “as soon as probable cause arises,” and South Carolina states that police may arrest if the person to be arrested “freshly committed” domestic violence.

TECHNICAL ISSUES

PDD, AOC, AGO suggest making the definition of “household member” the same as in the Crimes Against Household Members Act, the Family Violence Protection Act and the Criminal Procedure Act.

ABS/jle/al/jo