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FISCAL IMPACT REPORT

SPONSOR Garratt/Borrego/Dixon/Figueroa **LAST UPDATED** 3/14/2023
ORIGINAL DATE 2/22/2023
SHORT TITLE Felony Warrant Backlog Reduction **BILL NUMBER** House Bill 387
ANALYST Rabin/Gray

APPROPRIATION* (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------------|------------------------------|------------------|
| FY23 | FY24 | | |
| \$0.0 | \$20,000.0 | Nonrecurring | General Fund |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|--------------|-------|------------------------------|---|
| FY23 | FY24 | FY25 | | |
| \$0.0 | Up to \$24.5 | \$0.0 | Nonrecurring | Metropolitan Court Warrant Enforcement Fund |

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|-----|-------|-------------------------|-------|-------------------------|------------------------------|------------------|
| DFA | \$0.0 | \$600.0 to \$1,000.0 | \$0.0 | \$600.0 to \$1,000.0 | Nonrecurring | General Fund |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bill 97
 Partially duplicates appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Bernalillo County Metropolitan Court (BCMC)
 Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)
Department of Finance and Administration (DFA)
Corrections Department (NMCD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 387

House Bill 387 appropriates \$20 million from the general fund to the Department of Finance and Administration (DFA) for the purpose of reducing the backlog of outstanding felony warrants. Funds may be provided to the New Mexico State Police (NMSP), county sheriff's offices, municipal police departments, district courts, district attorney offices, the Public Defender Department (PDD), detention facilities, the Administrative Office of the Courts (AOC) for district courts and magistrate courts statewide, and the Probation and Parole Division of the Corrections Department (NMCD). A total of \$10 million is directed towards entities in Bernalillo County, with \$7 million reserved for police agencies in that county; notably, none of these funds may be expended on NMSP. The remaining \$10 million is directed towards entities in any county (including Bernalillo County), except that funding provided to NMCD from that \$10 million may only be used for warrant backlog reduction efforts outside Bernalillo County.

HB387 instructs DFA to disburse funds to law enforcement agencies that submit documentation detailing how the funds will be used to reduce the felony warrant backlog. DFA shall consider the alleged crime, age of warrant, and whether an offender is a repeat offender when determining whether to disburse funds to a requesting agency. It appears these provisions are intended to apply only to law enforcement agencies, but as currently written, these provisions could be interpreted to apply to DFA's determination regarding disbursement of funds to all recipient entities (see Technical Issues, below).

HB387 further instructs DFA to disburse funds to district courts, PDD, district attorney offices, and detention facilities

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Appropriation. The appropriation of \$20 million contained in this bill is a nonrecurring expense to the general fund. The bill allows for the expenditure of these funds in FY24, but does not explicitly provide for any unexpended or unencumbered balance remaining at the end of FY24 to revert.

The House Appropriations and Finance Committee Substitute for House Bills 2 and 3, as amended by the Senate Finance Committee (General Appropriation Act), appropriates \$10 million to DFA to distribute to relevant entities for felony warrant enforcement statewide. This appropriation is not contingent on enactment of HB387 or similar legislation.

Revenue Impact. The Metropolitan Court warrant enforcement fund receives fee revenue of \$100 for each warrant served. The Albuquerque Police Department (APD) estimates additional funds of \$5 million would enable it and its law enforcement partners in Bernalillo County to serve 950 warrants in FY24, focusing primarily on felony offenders. Felony warrants are issued by either the Bernalillo County Metropolitan Court (BCMC) or district courts, but no fee is assessed for warrants served in district courts. As a result, the warrant enforcement fee would only be applied to BCMC warrants served. Of the total active felony warrants in Bernalillo County, about 25 percent were issued by BCMC. If 25 percent of the 950 warrants APD expects to serve are issued by BCMC (242 warrants), the metropolitan fund could receive up to \$24.2 thousand in additional revenue.

Because this program is not expected to continue in future fiscal years, these revenue impacts are only anticipated to occur in FY24.

Additional Operating Budget Impact. DFA will likely face increased costs to manage and distribute the funding appropriated under this bill. The bill does not provide for a proportion of funds to be used to offset costs for administrative agencies. Depending on the complexity of the programs established to determine these distributions, costs to administer these funds could be substantial. Assuming an administrative cost of between 3 percent and 5 percent of funds administered, this analysis estimates DFA could face administrative costs of \$600 thousand to \$1 million. These costs are anticipated to only occur during the time in which funding is distributed, FY24.

NMCD notes the bill could result in increased incarceration costs if additional inmates are incarcerated as a result of increased warrant enforcement. These costs are not possible to determine, but NMCD reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the states prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities.

SIGNIFICANT ISSUES

Although HB387 requires entities to submit documentation to DFA to receive funding, it does not require recipient entities to report on the expenditure of these funds or the results of their efforts. For example, the bill requires a law enforcement agency to specify the number of outstanding felony warrants it intends to address, but does not require the agency to report on how many warrants it was able to address and the outcomes of addressing those warrants. It may be desirable to add such reporting requirements.

Because the cases created by additional warrant enforcement under this bill may not be fully adjudicated until FY25 or later (and some detention costs may be incurred even later), restricting the funding to FY24 substantially reduces the utility of these funds to “downstream” agencies, including judicial agencies and detention facilities.

The Department of Public Safety notes the specificity of the information DFA is required to consider when disbursing funds (Subsection C) could cause some issues; for example, an offender might be arrested between the time of the funding request and the disbursement of the funds.

The Public Defender Department notes that it is required to submit a plan for the use of funds to DFA, but its role is largely responsive, and the agency may not be able to determine its needs sufficiently far in advance to receive funding. Similar concerns likely apply to courts, detention centers, and district attorney offices.

DFA notes a potential impact on dispatch agencies that may not be covered under the provisions of this bill, writing:

Majority of agencies who dispatch for law enforcement agencies are consolidated Public Safety Answering Points (PSAPs) and support multiple law enforcement agencies. APD, BCSO, and NMSP directly support their dispatch operations and could support overtime costs for public safety telecommunicators directly through their awarded funding. However, consolidated PSAPs are typically governed by a JPA and funded through a fiscal agent which creates questions on their eligibility to request funding when they are directly supporting these operations.

DFA adds:

Increasing police field operations may cause the public safety telecommunicators with the dispatching agencies for those law enforcement agencies the need to deploy special or overtime shifts to provide the additional support that is necessary to complete these operations which include handling all radio traffic, following procedures and utilizing the National Crime Information Center (NCIC) criminal information database, and proper handling of all paperwork through its chain to the courts and are not included.

Warrant Enforcement and Violence. Warrant enforcement increases the risk of violence, both for law enforcement officers and the public. In 2020, about 60 percent of federal law enforcement homicides—when a federal law enforcement officer killed a person justifiably or not—occurred during the enforcement of a warrant.¹ Similarly, about 6 percent of law enforcement officer deaths—when an officer was killed—occurred when serving a felony warrant.²

RELATIONSHIP

HB387 relates to House Bill 97, which appropriates \$20 million to reduce the backlog of outstanding felony and misdemeanor warrants.

HB387 relates to a \$10 million appropriation in the current version of the General Appropriation Act for felony warrant enforcement statewide. This appropriation is not contingent on enactment of HB387 or similar legislation.

TECHNICAL ISSUES

¹ See Bureau of Justice Statistics, Federal Law Enforcement Agency Deaths in Custody Reporting Program, fiscal year 2020.

² See the National Law Enforcement Officers Memorial Fund 2022 report.

Subsection A does not clarify if the appropriation will revert at the end of FY24, although the funding may only be expended in FY24.

NMSP is excluded from receiving any of the \$10 million in funding directed toward Bernalillo County in Paragraph 1 of Subsection A. It is unclear if this exclusion is intentional. NMSP may receive funding for operations in any area of the state (including Bernalillo County) from the \$10 million in funding provided for in Paragraph 2 of Subsection A.

The \$10 million in funding provided for in Paragraph 2 of Subsection A is directed to be used in “any county” or “statewide” for all entities except the Probation and Parole Division of NMCD, which is only allowed to receive funding “to assist efforts throughout the state within any other county or municipality not described in Paragraph (1)” (page 2, lines 17-19) (Paragraph 1 describes Bernalillo County). Although NMCD may receive part of the \$10 million directed to Bernalillo County for efforts there, it is unclear if its exclusion from using the statewide funds within Bernalillo was intentional.

The provisions of Subsection C provide requirements for factors for DFA to consider when disbursing funds to a requesting “agency” (page 4, line 14), which could be interpreted to apply to any agency requesting funding provided for in this bill. However, the particular factors enumerated in this subsection appear to only be relevant to law enforcement agencies.

Page 4, lines 14-15 state that “the department of finance and administration shall consider the following factors of the felony warrants and alleged perpetrator.” The plural “warrants” does not align with the singular “perpetrator,” except in instances in which an alleged perpetrator has multiple warrants.

Subsection C requires DFA to consider factors when disbursing funds to a requesting agency that the bill does not require be reported when an agency requests funding. Subsection C requires DFA to consider factors specific to individual crimes, warrants, and perpetrators, but Subsection B only requires law enforcement agencies to provide documentation specifying the number of outstanding felony warrants the law enforcement agency intends to address, not a specific list of warrants and perpetrators.

Subsection D provides for DFA to disburse funds to district courts, but does not provide for it to disburse funds to AOC, magistrate courts, or the Bernalillo County Metropolitan Court. However, Subsection A specifically provides for funding to be disbursed to AOC (page 2, line 12 and page 3, lines 11-12), magistrate courts (page 3, line 12), and Bernalillo County Metropolitan Court (page 2, lines 13-14).

Neither Subsection B nor Subsection C (which provide for the disbursement of funds) reference NMCD, despite NMCD be included as an eligible entity in Subsection A.

OTHER SUBSTANTIVE ISSUES

AOC reports that there were 206.9 thousand warrants issued by state courts in the court database as of January 9, including 16 thousand felony warrants. According to preliminary data provided by AOC, a total of 3,796 felony warrants tied to 3,188 individuals were active as of that date in Bernalillo County (issued by the 2nd Judicial District Court and Bernalillo County Metropolitan Court), of which 2,172 warrants tied to 1,611 individuals were issued prior to 2020. In total, 57

percent of active felony warrants issued by state courts in Bernalillo County are over two years old and 37 percent are more than eight years old.

AOC notes outstanding warrants may include people who are deceased, incarcerated, or have moved to a different address and suggests these issues be addressed prior to appropriating funds for enforcement.

Warrant Types. Arrest warrants are issued at the request of law enforcement with the goal of arresting an individual believed to have committed a crime. Arrest warrants represent a very small share (9 percent) of active warrants in Bernalillo County, with the remaining 91 percent comprising bench warrants. Bench warrants are issued by a judge based on an individual's failure to comply with an order of the court, including appearing for hearings, complying with conditions of release, or complying with conditions of probation. About a third (35 percent) of all active felony warrants in Bernalillo County are for failure to appear and 15 percent are for probation violations, while 42 percent are for failures to comply with other orders. AOC reports individuals arrested on bench warrants are typically detained for a short period of time (one to two days) until a hearing can be held, and are usually released after the hearing.

Case Types. Bench warrants associated with cases involving property crimes and drug crimes make up the largest share of all active felony warrants in Bernalillo County. A total of 509 active bench warrants, 13 percent of all active felony warrants in the county, are related to cases in which an individual was charged with "simple" possession of a controlled substance (possession without distribution or trafficking or intent to distribute or traffic). A total of 20 active bench warrants relate to possession or distribution of marijuana.

Warrant Age. Most active warrants issued by state courts in Bernalillo County are over two years old, and over a third (37 percent) are over eight years old. The oldest active warrants are from 1971 and are all bench warrants, including one related to a charge of aggravated assault, two related to kidnapping, and two related to murder. The oldest active arrest warrant was issued in 2000; the 403 warrants issued prior to 2000 are all bench warrants. Most active arrest warrants were issued in 2019 (124) and 2018 (61), which together comprise 57 percent of all active arrest warrants.

Other Sources of Warrants. Not all warrants are issued by state courts and tracked in AOC's database. Other entities empowered to issue warrants include magistrate, tribal, and federal courts, as well as adult probation and parole officers. All warrants are entered into the Department of Justice's National Crime Information Center (NCIC) system, which allows law enforcement to access warrants from all sources. It does not appear possible to pull aggregate reports of all warrants from NCIC.

Albuquerque Warrant Proposal. The city of Albuquerque and APD have proposed using additional funds, such as the funding proposed in this bill, to enable its officers to investigate and serve about 950 warrants, primarily warrants tied to violent offenses for which a strong case can be made that the individuals should be detained pending trial.

Metropolitan Court Warrants. The Bernalillo County Metropolitan Court provides the following additional information:

The Court has identified 107,909 active warrants dating back to 1980, which

includes traffic, parking, criminal misdemeanors, including but not limited to domestic violence and DWI misdemeanor cases, criminal felonies, including but not limited to felony domestic violence and felony DWI cases and contempt of court cases.

Metropolitan Court previously hosted an in-person Safe Surrender Event in October 2019, which resulted in the clearance of 1,037 warrants. Metropolitan Court is rolling out a Safe Surrender Plan, which would set aside virtual Safe Surrender settings on participating dockets throughout the allotted time period, and could start as early as February 2023. The planned safe surrenders on the above-mentioned warrants would take place during regular business hours, and is not expected to involve overtime pay for Court staff. There would be minor expenses in postcards and postage, if sent, as well as nominal costs which could potentially be funded from the warrant fund.

Metropolitan Court did not began conducting Preliminary Examinations until January 22, 2018. Prior to January 2018, Metropolitan Court heard felony cases only at Felony First Appearance. Then, those felony cases would have to have been initiated by Grand Jury Indictment or Criminal Information and Bind Over filed at Second Judicial District Court. In cases where the defendant was arrested and appeared in Metropolitan Court for a Felony First Appearance, but not indicted or bound over, the felony cases initially opened in Metropolitan Court remained open when the District Attorney declined to initiate a preliminary examination or grand jury in Second Judicial District Court. Metropolitan Court never dismissed the felony first appearance case when the District Attorney's Office failed to file any pleading (Information/Bind Over/Indictment/Nolle Prosequi) in the Second Judicial District Court, as a result the felony case remained open at Metropolitan Court. Metropolitan Court has identified approximately 75,960 felony cases that have remained open, where Bernalillo County Metropolitan Court no longer has jurisdiction, dating back to 2004 that need to be closed. Closure of these old felony cases would also address outstanding felony warrants, if any, that are pending in the case.

ALTERNATIVES

AOC notes the following potential alternate sources of funding for warrant enforcement:

- Law enforcement agencies can be reimbursed for the purpose of serving warrants from the Metropolitan Court warrant enforcement fund (Section 34-8A-12(C) NMSA 1978).
- Law enforcement agencies can be reimbursed for the purpose of serving warrants from the magistrate court warrant enforcement fund (Section 35-6-5(C) NMSA 1978).
- Some municipalities, including Clovis, Las Cruces, Los Alamos, Rio Rancho, and Santa Fe, have ordinances that provide for reimbursement to law enforcement for the expense of serving warrants through the municipality warrant enforcement funds.

AOC further suggests the state create a permanent “New Mexico Fugitive State Surrender” program, which it proposes be modeled after a federal program but tailored to meet New Mexico’s needs.

DFA suggests an alternate system could be created, writing:

A program created similar to the Local DWI Program grant program, *that funds overtime only (no benefits) for law enforcement officers*, to support warrant backlog may be considered to distribute funds fairly to *all* law enforcement agencies and contributing agencies in the warrant reduction effort across NM who face the similar situation. Some other issues they face include high vacancy rates and continuous crime activity. A program that supports these agencies coming together to conduct *warrant roundups* and made through reimbursements based on the operation event that was or will be conducted and ensuring that all agencies who play a role are notified.

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