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FISCAL IMPACT REPORT

SPONSOR <u>HAFC</u>	LAST UPDATED <u>3/14/2023</u>
	ORIGINAL DATE <u>3/3/2023</u>
SHORT TITLE <u>Warrant Backlog Reduction</u>	BILL NUMBER <u>CS/House Bill 550/HAFCS/aHFI#1</u>
	ANALYST <u>Rabin/Gray</u>

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
\$0.0	Up to \$24.2	\$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	Up to \$200.0	\$0.0	Up to \$200.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 97, House Bill 387, and Senate Bill 84

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Administrative Office of the District Attorneys (AODA)
 New Mexico Attorney General (NMAG)
 Department of Public Safety (DPS)

Responses to Related Bill (House Bill 387) Received From

Administrative Office of the Courts (AOC)
 Bernalillo County Metropolitan Court (BCMC)
 Public Defender Department (PDD)
 Corrections Department (NMCD)

SUMMARY

Synopsis of HFI#1 Amendment to HAFC Substitute for House Bill 550

House Floor Amendment #1 to the House Appropriations and Finance Committee Substitute for House Bill 550 adds magistrate courts to the list of entities eligible to receive funding for warrant backlog reduction. This does not appear to substantively change the bill, as magistrate courts would have been able to receive funding through district courts, but the amendment may help to clarify legislative intent.

Synopsis of HAFC Substitute for House Bill 550

The House Appropriations and Finance Committee Substitute for House Bill 550 establishes temporary provisions for the distribution of money appropriated by the General Appropriation Act of 2023 from the general fund to the Department of Finance and Administration (DFA) for the purpose of warrant backlog reduction. HB550 allows for the funds to be distributed for grants for warrant backlog reduction efforts, and up to 3 percent of the appropriation may be expended for administrative costs related to their distribution.

HB550 creates a 10-member warrant backlog reduction committee comprising:

- One representative from the Department of Public Safety (DPS), appointed by the DPS secretary;
- One representative from a municipal police department, appointed by the Municipal League;
- One representative from a county sheriff's office, appointed by New Mexico Counties;
- One representative from a tribal law enforcement agency, appointed by the secretary of the Indian Affairs Department;
- One representative from the Public Defender Department (PDD), appointed by the chief public defender;
- One representative from the Administrative Office of the District Attorneys (AODA), appointed by the AODA director;
- One representative from a local jail (county detention facility), appointed by New Mexico Counties;
- One representative from the Probation and Parole Division of the Corrections Department (NMCD), appointed by the NMCD secretary;
- One representative from the Administrative Office of the Courts (AOC), appointed by the AOC director; and
- One representative from DFA, appointed by the DFA secretary.

The funds may be used to provide grants to county sheriff's offices, municipal police departments, tribal law enforcement agencies, PDD, district attorney offices, district courts and the metropolitan court through AOC, local jails, New Mexico State Police (NMSP and any of its offices), and NMCD's Probation and Parole Division and any of its offices. To be eligible for grants, agencies must be in compliance with all applicable statutory reporting requirements and reporting requirements of active appropriations.

Allowable uses of the grants include:

- Compensating employees who perform duties related to warrant backlog reduction efforts;
- Compensating employees who work overtime hours related to warrant backlog reduction efforts;
- Funding warrant backlog entry;
- Funding warrant backlog cleanup; and
- Advertising and conducting safe surrender events at which a person with an outstanding warrant may resolve an outstanding warrant by safe surrender.

Grants explicitly cannot be used for recurring initiatives (unless a grantee has provided a plan to replace nonrecurring grant funds with another source of recurring funds) or to create new employee positions.

The committee is tasked with developing criteria for awarding the grants, awarding the grants, collecting information on initiative expenditures, and reporting information on applicants, grantees, and initiatives to the Legislature. The grant criteria must consider:

- The number of outstanding felony warrants in an applicant's jurisdiction;
- The severity of the crimes giving rise to the outstanding felony warrants in an applicant's jurisdiction;
- The age of the outstanding felony warrants in an applicant's jurisdiction;
- Whether and to what extent additional arrests performed for outstanding warrants will impact the applicant;
- The number of repeat offenders for whom outstanding warrants were issued in an applicant's jurisdiction;
- the number of violent crimes, including homicide, aggravated battery with a deadly weapon, aggravated assault with a deadly weapon, robbery, kidnapping, felony domestic violence, auto theft and burglary, giving rise to the outstanding felony warrants in an applicant's jurisdiction;
- The applicant's intended use of a grant to pay overtime costs associated with warrant backlog reduction efforts; and
- The total personnel cost of operations.

Up to 3 percent of the available funding may be used by DFA for administrative costs, including evaluation of the efficacy grantee initiatives. Of the remaining funds, up to 70 percent may be used for awards to law enforcement agencies and NMCD's Probation and Parole Division, and any remaining funding may be awarded to PDD, district attorney offices, and the courts.

Grantees must report expenditures for the initiative to the committee on 90-day intervals until the initiative is completed or all funds are expended, whichever is earlier. Any unexpended money remaining after the completion of the initiative shall revert to the fund within 60 days.

Law enforcement agencies and NMCD's Probation and Parole Division who receive grants must provide a list of warrants the agency intends to target as part of its warrant enforcement efforts and report the status of each of the warrants previously identified to be targeted, any warrants the grantee no longer intends to target, and any additional warrants the grantee intends to target on 90-day day intervals until the initiative is completed or all funds are expended, whichever is earlier.

The committee must provide yearly reports to the Legislature on applicants, grantees, data collected, and evaluations made by DFA regarding the efficacy of warrant backlog reduction efforts, as well as data on warrants targeted and their status.

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

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 HB550 or similar legislation; however, HB550 provides temporary provisions for the distribution of these funds.

Revenue Impact. The Metropolitan Court warrant enforcement fund receives fee revenue of \$100 for each warrant served. The Albuquerque Police Department (APD) previously estimated 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 court warrant enforcement fund could receive up to \$24.2 thousand in additional revenue. HB550 provides up to \$7 million for all law enforcement agencies and NMCD's Probation and Parole Division, so it is possible APD will receive the \$5 million its estimate was based on or even receive more funding, but it seems likely the agency would receive less given the need to spread these funds across the state, which would result in lower revenue to the metropolitan court warrant enforcement fund.

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 funds appropriated in the current version of the General Appropriation Act (GAA) and governed by the provisions of HB550. The bill provides for 3 percent of the appropriation to be used to offset costs for administrative agencies, a total of \$300 thousand. However, if administrative costs are higher, DFA could face costs not covered by the current appropriation, creating an additional operating budget impact for the agency. If administration of the funds appropriated in the GAA cost up to 5 percent of the total appropriation (a total of \$500 thousand), DFA could face an additional operating budget impact of up to \$200 thousand.

SIGNIFICANT ISSUES

Eligible Grant Recipients. DFA notes dispatchers may also face additional workloads as a result of increase warrant enforcement efforts, but dispatch agencies were not included as an

eligible grant recipient under the provisions of HB550.

DFA further notes House Floor Amendment #1 adds magistrate courts as eligible grant recipients, but magistrate courts do not have authority to adjudicate felony cases, and the funding contained in HB550 is restricted to addressing outstanding felony warrants.

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

HB550 relates to House Bill 97 and House Bill 387, both of which appropriate \$20 million to reduce the outstanding warrant backlog.

HB550 relates to a \$10 million appropriation in the GAA for felony warrant enforcement statewide. This appropriation is not contingent on enactment of HB550 or similar legislation, but HB550 provides temporary provisions governing the distribution of this appropriation.

NMAG notes HB550 may be impacted if Senate Bill 84 is enacted. SB84 “...would make changes to the current parole system, including specific provision for technical violations of parole that would default to the issuance of a notice to appear, rather than an arrest warrant, except where specifically authorized based on a flight risk or danger to the community. This change may affect the number of outstanding arrest warrants.”

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

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.

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 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. However, the estimated number of warrants APD expected to be able to investigate and serve was based on an anticipated \$5 million appropriation to Bernalillo County law enforcement agencies; under the provisions of HB550 and based on the \$10 million appropriation in the current version of the GAA, the maximum funding that could be allocated to law enforcement agencies is \$7 million. It is possible Bernalillo County law enforcement agencies will receive sufficient funding to serve all 950 warrants (\$5 million), but funding will also need to be spread statewide, potentially reducing Bernalillo County’s allocation.

Metropolitan Court Warrants. In its analysis of a similar bill (HB387), Bernalillo County Metropolitan Court provided 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

In its analysis of a similar bill (HB387), AOC noted 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.

In its analysis of HB387, AOC further suggested the state create a permanent "New Mexico Fugitive State Surrender" program, which it proposed be modeled after a federal program but tailored to meet New Mexico's needs.