

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 FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** Wirth **ORIGINAL DATE** 02/09/09  
**LAST UPDATED** 03/19/09 **HB** \_\_\_\_\_

**SHORT TITLE** Search Warrants At Domestic Violence Shelters **SB** 279/aHJC

**ANALYST** Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- The Administrative Office of the Courts (AOC)
- The Administrative Office of the District Attorney's (AODA)
- The Attorney General's Office (AGO)
- Bernalillo County Metropolitan Court (BCMC)
- Public Defender Department (PDD)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to SB 279 changes language to read that it is not a violation for a person associated with a domestic safe house or shelter to request a law enforcement officer to show a valid search warrant before entering the safe house or shelter. Previous language read to require instead of to request a search warrant.

The amendment also clarifies that nothing in this bill shall prevent a law enforcement officer from executing a valid search warrant.

#### Synopsis of Original Bill

Senate Bill 279 makes it clear that employees of domestic violence safe houses or shelters do not commit either the crime of resisting, evading or obstructing an officer or the crime of harboring or aiding a felon if they require a law enforcement officer to show a valid search warrant before entering the safe house or shelter.

The Bill also requires a law enforcement officer to obtain a search warrant before attempting to serve an arrest warrant within a domestic violence safe house or shelter, absent exigent circumstances requiring immediate entry.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. 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.

### **SIGNIFICANT ISSUES**

The AGO states that the bill addresses a problem due to current statutory requirements prohibiting domestic violence safe houses and shelters from disclosing information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking. This situation has arisen where an individual is at a safe house or shelter and is accused of a crime. Law enforcement officers obtain an arrest warrant for the individual but the safe house or shelter personnel are prohibited from saying whether the individual is located inside. Once a search warrant to search for the individual has been obtained, the safe house or shelter personnel are relieved of their legal obligation of non-disclosure. However, the initial refusing to disclose whether a certain individual is located within the safe house or shelter could be construed as resisting, evading or obstructing an officer.

The PDD states that the language of this bill does not provide an effective mechanism for preventing police overreaching and provided the following:

The law should simply state that a domestic violence shelter shall be deemed the legal home of the residents when they are there and a resident of domestic violence a shelter is entitled to all of the protections against unlawful search and seize and unlawful arrest guaranteed by the state and federal constitution.

The law should also state that an employee at a domestic violence shelter does not have the authority to waive a resident's fourth amendment rights. That way, the police cannot bully the employees into letting them into the resident's home.

If the legal status of the residents and the employees were spelled out, the constitutional protections provided by the fourth amendment designed to protect citizens in his home would apply in this situation.

### **ADMINISTRATIVE IMPLICATIONS**

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

**TECHNICAL ISSUES**

The AGO notes that asking safe house or shelter personnel to require a "valid" search warrant is problematic, because there is no way for the personnel to determine whether the warrant is valid (subsection A).

DW/mc:svb