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FISCAL IMPACT REPORT

SPONSOR: Robinson DATE TYPED: 02/22/01 HB _____
 SHORT TITLE: Amnesty for Prior Bench Warrants SB 501
 ANALYST: Hayes

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|---------|----------------------|---------------|
| FY01 | FY02 | FY01 | FY02 | | |
| | | \$ 50.0 | \$ 50.0 | Non-recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

| Estimated Revenue | | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected |
|-------------------|--------------|-------------------------|----------------------|---------------|
| FY01* | FY02 | | | |
| \$ (300.0) | \$ (900.0) | \$ indeterminate | Recurring | General Fund |
| \$ (400.0) | \$ (1,100.0) | \$ indeterminate | Recurring | Various Funds |

(Parenthesis () Indicate Revenue Decreases)

Relates to SB498.

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 Public Defender Department (PDD)
 LFC budget files

SUMMARY

Synopsis of Bill

Section 1. SB501 authorizes a magistrate judge to order a law enforcement agency to serve a bench warrant upon an individual.

Section 2. A temporary provision would be enacted in SB498 which provides “amnesty” for individuals who have not been served with warrants issued prior to January 1, 2001, meaning no fee will be assessed.

Significant Issues

A. Serving Bench Warrants. The magistrate courts already have the authority to order a law enforcement agency to serve a bench warrant upon an individual. The warrant itself is an order to arrest the defendant named therein.

B. Amnesty for Prior Warrants. Section 3 of this bill would make every outstanding warrant in the magistrate court system issued prior to January 1, 2001 unenforceable and, therefore, uncollectible. Estimates are that approximately 30,000 outstanding bench warrants would be canceled.

C There is a constitutional question whether or not these warrants can be forgiven. Article IV, Section 32 of the Constitution of the State of New Mexico prohibits the forgiveness of debts owed to the state, so these debts remain on state records but in a category which defines them as “uncollectible.”

This bill’s language states that a bench warrant issued prior to January 1, 2001 is “unenforceable” and that no fees “shall be collected if the warrant is unenforceable.” Therefore, it does not specifically say the debt is forgiven, despite the bill’s language calling for “amnesty for prior warrants.” It appears the bill is attempting to bypass the constitutional issues by framing it with warrant “unenforceability” language.

C Thousands of bench warrants are issued by magistrate courts throughout New Mexico for various crimes; from misdemeanors to aggravated DWI, or driving without a license to battery on a household member. A substantial number of bench warrants issued result from traffic violations and criminal cases initiated by police officers or other law enforcement agencies. According to the magistrate court director, many of these outstanding warrants are for fugitives on felony warrants. Often time, it is directly *because of the bench warrant that the felon is arrested*. This bill proposes dismissing those warrants. Apart from revenue, this is one of the most serious implications of SB498.

C Bench warrants issued by magistrate court are returned to the requesting agency for entry into New Mexico Criminal Information Center (NMCIC). When a warrant is canceled by the court, it must also be cancelled from MNCIC by the requesting/originating agency (ORI). Bench warrants requested by State Police officers and issued by the court are entered into NMCIC by civilian personnel, usually by police radio dispatchers. This process, although not lengthy, requires the ORI to comply with strict guidelines to ensure accuracy of the NMCIC network which is statewide and accessible by all law enforcement agencies.

Passage of this bill would require canceling thousands of warrants, would negatively affect revenue and would require an intense workload, overtime and massive coordination by numerous agencies.

C Without any outstanding warrants to enforce except for those accrued in 2001, there would be no need for the Warrant Enforcement Program. The program was specifically created to enforce outstanding bench warrants and to collect outstanding fees, fines and costs in the

magistrate courts so they may uphold judicial integrity. Without having enforceable outstanding warrants, the purpose for existence of the program is eliminated.

FISCAL IMPLICATIONS

Given that there is no effective date on this bill nor an emergency clause, the assumptions in this fiscal analysis are based on the amnesty date of “prior to January 1, 2001” as stated in the bill.

Currently, there are approximately 30,000 outstanding bench warrants throughout the state. The outstanding debt of those 30,000 is estimated to be \$8.0 million. Granted, the entire \$8.0 million may not collectible; however, the amount reflects the total debt accrued on state records. If this bill is enacted as written, that \$8.0 million debt would be cleared from the books.

For the past three fiscal years, the magistrate Warrant Enforcement Program has collected approximately \$2.8 million each year on the debt; that is, on outstanding bench warrants. Approximately 25% (\$700.0) of the fines and fees go directly to the general fund; another 25% is deposited into ten different funds. The remaining 50%, or \$1.4 million, is collected from assessed bench warrant fees and is used to fund the program itself. By eliminating outstanding warrants prior to January 1, 2001, it is estimated that \$2.0 million in fee revenue would be lost each fiscal year (see revenue table on page 1).

Passage of this bill would eliminate the source of revenue which supports the Warrant Enforcement Program. Secondly, since NMFA bond-related funds such as the Magistrate Metropolitan Court Capital Fund and the Supreme Court Automation Fund are funded by revenue collected from this program, those funds would be negatively affected. Thirdly, the Tax Refund Intercept Program (TRIP) would also be affected by this legislation. All cases with a warrant status are submitted to the Department of Taxation and Revenue through TRIP, regardless of the age of the case. TRIP brings in additional \$150.0 per year of unpaid fines and fees as a result of the Warrant Enforcement Program.

RELATIONSHIP

SB501 also addresses bench warrants and contains the same amnesty provision as SB498.

TECHNICAL ISSUES

The EFFECTIVE DATE of the provisions of this act needs to be specified, or the bill needs to “declare an emergency” for its implementation.

OTHER SUBSTANTIVE ISSUES

In the short-term, funding for overtime may be needed by law enforcement agencies and the courts in order to implement the requirements of SB501 to cancel thousands of outstanding bench warrants. (Note the \$50.0 in the appropriation table on page 1. It is for either FY01 or FY02, depending on the effective date of this bill. The \$50.0 is a minimum estimated amount needed to pay for the overtime that will be required to cancel 30,000 bench warrants.)

In addition, the bill would reduce the number of warrants that need to be served, thereby reducing the time and effort exerted for arrests and collections.

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In the long-term, pre-2001 warrants that were not canceled or accidentally missed could place law enforcement officers in a position to be the subject of Tort Claim Notices by people who are falsely arrested on an invalid warrant.

An issue not addressed in the fiscal impact analysis for SB498 is the re-issuance of bench warrants. Consistent with standard practice or the requirements laid out in Section 1 of this bill, judges have the ability to reissue every one of those 30,000 warrants that are deemed “unenforceable” if they so desire. The enormity of that task would be weighed against the potential gain to the courts and the public.

CMH/lrs