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FISCAL IMPACT REPORT

SPONSOR: Zanetti DATE TYPED: 02/04/03 HB 156

SHORT TITLE: Domestic Violence Arrests SB _____

ANALYST: Hayes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB257, HB264 and SB52

SOURCES OF INFORMATION

Responses Received From

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

SUMMARY

Synopsis of Bill

House Bill 156 adds a new section to the Crimes Against Household Members Act which mandates that a person arrested for a domestic violence offense must be held for at least forty-eight hours following the offender's arrest. The offender would be given a bail hearing and would be eligible for bail after the forty-eight hour hold period.

The effective date of this legislation is July 1, 2003.

Significant Issues

1. In many judicial districts throughout New Mexico, a mandatory hold on arrested domestic violence offenders has been enacted. The mandatory holds range from 24 hours to 72 hours. Many domestic violence advocates believe in the mandatory hold because it offers a “cooling off” period for the offender and allows the victim to access services and legal status, such as shelter arrangements and Orders of Protection.
2. For the proposed change in the Crimes Against Household Members Act to be effective, DOH believes that victim notification of the release of an offender from jail is essential. Many offenders have killed domestic violence victims after being released from incarceration and their victims were unaware of the offender’s release.
3. HB156 uses permissive terms by stating that “the offender **may** be held for a period of not less than forty-eight hours....” The bill does not address what person or entity has the discretion to release the offender in less than 48 hours. If the purpose of the legislation is to provide a cushion of safety for the victim by insuring that the alleged offender will be detained for 48 hours, then the language should be mandatory.
4. Both the Attorney General’s Office and the Public Defender raised issues with this bill. The Public Defender (PDD) states that holding domestic violence arrestees and protective order violators for up to 48 hours before a bail hearing violates due process, equal protection and the Rules of Criminal Procedure (NMRCP 305). It may violate equal protection because domestic violence arrestees will be treated differently from people arrested for other types of crimes.
5. HB156 also presents a possible problem with the Public Defender’s representation, according to their office. Will public defenders have an obligation to respond immediately with a request for a bond hearing in the circumstances outlined by the bill? Although proponents of the bill may insist the 48 hours is only a “cooling off” period that benefits the injured spouse, HB156 automatically assumes the accused is “guilty.” This legal conclusion is not only violative of constitutional rights, but may invite abuse. If a household member is unjustly accused, the 48-hour incarceration would be an intrusion upon constitutional rights. The Public Defender Department is morally and statutorily obligated to respond to requests from clients who insist the accusation is false. Delay, through incarceration, is not a suitable option since “punishment” is inflicted immediately.

FISCAL IMPLICATIONS

Although there is no appropriation associated with this legislation, the Department of Public Safety suggests that holding offenders in detention for longer periods of time would necessarily have a negative fiscal impact on counties and municipalities operating the prisons that house these offenders.

RELATIONSHIP

SB52 appropriates \$2 million from the general fund for the Children, Youth, and Families Department (CYFD) for expenditure in fiscal years 2003 and 2004 to continue to contract with do-

mestic violence shelters and programs statewide to provide services to victims of domestic violence and their families.

HB257 amends the local DWI grant program to allow local DWI grant funds to be used for programs, services or activities to prevent or reduce the incidence of domestic abuse related to alcoholism or alcohol abuse.

HB264 also amends the Crimes Against Household Members Act by requiring the court to order a person convicted for the first time for violation of a criminal offense pursuant to the Crimes Against Household Members Act to participate in and complete a program of professional counseling at his/her own expense.

TECHNICAL ISSUES

The Attorney General's Office submits the following technical issue: The rules of magistrate and metropolitan courts currently require that a defendant be brought promptly, and in all cases, within 48 hours, for the setting of bail as provided in the New Mexico Constitution. While reasonable pretrial detention has been upheld in other jurisdictions, minimum detentions have encountered successful legal challenges. Kansas v. Cuchy, et al., 270 Kan. 763, 19 P.3d 152 (2001). Concerns could be alleviated with a requirement for an individualized finding that immediate release would pose a danger to the victim or another person and that a bond does not provide the needed protection. (See N.C. Gen. Stat. Ann. 15A-5344.1)

OTHER SUBSTANTIVE ISSUES

Without legislation, domestic violence offenders will continue to have the option of arranging bail and return to the victim's home in less than 24 hours, possibly perpetrate further victimization to the individual and/or the family.

CMH/njw :yr