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FISCAL IMPACT REPORT

SPONSOR: Gorham DATE TYPED: 02/18/03 HB _____

SHORT TITLE: Increase Penalties For Domestic Violence SB 521

ANALYST: Fox-Young

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Attorney General (AG)
 Administrative Office of the Courts (AOC)
 Corrections Department (CD)

No Response

Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 521 amends the “Crimes Against Household Members Act,” creating a graduated, mandatory sentencing structure for the crimes of “battery against a household member,” “aggravated battery on a household member,” and violation of an order of protection. The bill sets mandatory jail terms of six months, then increasing penalties with increases in the level of battery.

The bill elevates third and subsequent offenses of battery on a household member, and second and subsequent offenses of aggravated battery on a household member without death or great bodily harm from misdemeanors to fourth degree felonies.

The bill also provides for a 48-hour hold following arrest for a violation of the Crimes Against Household Members Act.

Significant Issues

AG notes that sentencing for these offenses currently allows for judicial discretion within an established range that includes non-incarceration options.

AG indicates that increasing penalties and mandating penalties in a graduated structure implicate due process and ex post facto protections, then noting that the proposed penalties are similar to the sentencing structure created in the Motor Vehicle Code for DWI crimes. Those penalties have survived due process and ex post facto challenges based upon the analysis stated in State v. Hall, 119 NM 707 (Ct App.1995), that imposing additional sanctions on persons previously convicted does not doubly punish for the prior acts, but rather increases punishment for subsequent repeated criminality. See State v. Oglesby, 96 NM 352, 353 (Ct. App. 1981).

AG reports that hurdles encountered in implementing the bill are likely to parallel those encountered in the implementation of the mandatory sentencing scheme for DWI. In the absence of a clear indication that habitual offender sentencing enhancement for felony convictions would apply, there will likely be interpretations that it does not. (AG references State v. Anaya) AG notes that mandatory sentencing for DWI offenders led to a significant increase in trials as well as an increase in dismissals as a result of backlogs. AG further implies that raising the stakes for offenders will encourage courts to test the state's proof more consistently and that record keeping in many of the lower courts will not support these tests.

AG notes that the 48-hour hold provisions could be strengthened if individual findings are made, demonstrating that the offender presents a significant danger.

AG notes that the bill does not consider out of state, tribal and federal convictions.

FISCAL IMPLICATIONS

A mandatory sentencing scheme raises the stakes in the prosecution of the crimes and is likely to increase the number of trials and appeals, also increasing the need for resources in the courts, district attorney and public defender offices.

The Corrections Department (CD) notes that increasing penalties, from misdemeanors to felonies, and increasing the overall length of sentences will likely propel a significant increase in the prison population. CD estimates the fiscal impact will begin to surface approximately one year after the effective date. CD reports that the bill will also result in an increase in numbers of offenders on probation and parole.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 561 (counseling for domestic violence offenders) and Partially Duplicates HB 156 regarding the 48-hour hold following arrest.

TECHNICAL ISSUES

AG notes that rules of Magistrate and Metropolitan Court 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. (AG references Kansas v. Cuchy) AG recommends the bill require an individualized finding that immediate release would pose a danger to the victim or another person and that a bond does not provide the necessary protection. (See e.g. N.C. Gen. Stat. Ann. 15A-5344.1)

Additionally, AG notes that the 48-hour hold provision mixes mandatory and permissive language and recommends this section be made consistent.

OTHER SUBSTANTIVE ISSUES

AG notes that while there is research indicating that arrest and punishment can prove successful as intervention techniques, some studies indicate that incarceration may increase the level of violence. (AG references Fagan, Jeffery, "The Criminalization of Domestic Violence: Promises and Limits," National Institutes of Justice Research Report; Sherman, Lawrence W. and Berk, Richard A., "The Specific Deterrent Effects of Arrest for Domestic Assault," 1984, American Sociological Review, 49: 261-272; Sherman, Lawrence, et al, "Crime Punishment, and Stake in Conformity: Legal and Informal Control of Domestic Violence" American Sociological Review, 57: 680-690; and Sherman, Lawrence, et al, "The Variable Effects of Arrest on Crime Control: The Milwaukee Domestic Violence Experiment", Journal of Criminal Law and Criminology 83:137-169.)

JCF/sb