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FISCAL IMPACT REPORT

SPONSOR Aragon DATE TYPED 2-10-04 HB _____

SHORT TITLE Increased Certain Domestic Violence Penalties SB 549

Reynolds-Forte

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			Substantial— See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Corrections Department
- New Mexico Sentencing Commission
- Public Defender
- Human Services Department
- Administrative Office of the Courts

SUMMARY

Synopsis of Bill

Senate Bill 549 makes changes to sentencing penalties relating to domestic violence as follows:

- Amends assault on a household member to increase penalties to mandatory jail time for 2nd and subsequent offenses.
- Amends aggravated assault to a mandatory six months for a first offense, one year for a second and 18 months for subsequent – all fourth degree felonies.
- Increases mandatory time for assault on a household member, a third degree felony, to one year for a first, two years for a second, and three years for any subsequent convictions.

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- Increases mandatory jail terms for the misdemeanor convictions of battery and makes an aggravated battery second conviction a fourth degree felony with a mandatory term of one year and a third, and subsequent conviction a mandatory term of 18 months.
- Adds a 48-hour hold following any arrest for any crime against a household member and provides for mandatory jail time for second and subsequent violations of Order of Protection.

FISCAL IMPLICATIONS

Passage of Senate Bill 549 would result in increased costs to the Public Defender, the Courts and the Corrections Department.

The Public Defender believes the exact fiscal implication of this legislation is difficult to predict, but the cost will be substantial. Additional felony attorneys and support staff will be required to handle the increased number of trials due to the severity of penalties involved. In the last legislative session, the Department estimated the cost of only the 48-hour hold provision would include at least one new PD III appellate attorney (\$62 thousand per year), significant contract counsel costs of at least \$200,000, and new staff attorneys to represent arrestees at initial appearance arraignments across the state (6 PD's at almost \$400 per year).

The Administrative Office of the Courts believes this bill has the potential to increase caseloads in the courts, thus requiring additional resources to handle this increased caseload.

The Corrections Department believes that due to lengthier mandatory sentences, there may be some impact on members of prisoners incarcerated for domestic crimes. However, the stiffer penalties might also lessen the numbers of repeat offenders. Lengthier sentences extends the amount of time the offender will be placed on parole, and 1 year paroles will jump to 2 years parole. The additional cost for each male inmate is \$20.7 thousand per year and female inmates is \$26.3 thousand per year. The cost per client in Probation and Parole for supervision is about \$1.5 thousand.

ADMINISTRATIVE IMPLICATIONS

The Public Defender believes this bill also presents a possible representation problem. The Public Defender Act requires that they represent all persons who are charged with an act that carries a possible sentence of imprisonment. While this requirement has been limited by the Defense of Indigents Act, which entitles persons accused of serious crimes, i.e. an offense that carries a possible penalty of 6 months or more, to an attorney, arrestees will, in all likelihood, demand representation before being subjected to the 48-hour hold. If the Department is held responsible to represent arrestees, public defenders will have to respond immediately with a request for a bond hearing in the circumstances outlined by the bill. This Department does not currently have the resources to fulfill this obligation.

Although proponents may insist the 48 hours is only a "cooling off" period that benefits the injured spouse, the bill automatically assumes the accused is "guilty." This legal conclusion may be found to violate constitutional rights, and may invite abuse. If a household member is unjustly accused (a common occurrence in domestic disputes particularly in a state where substance abuse is, tragically, endemic), the 48-hour incarceration is an intrusion upon the freedoms guaranteed by the New Mexico Constitution. The Public Defender is ethically, if not statutorily obligated to respond to requests from clients who insist the accusation is false. Delay is not a suitable option as the "punishment" is inflicted immediately. There is no remedy save an immediate hearing.

