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## FISCAL IMPACT REPORT

**SPONSOR** Beffort                      **DATE TYPED** 2/20/05                      **HB** \_\_\_\_\_

**SHORT TITLE** Domestic Violence Arrests within 24 hours                      **SB** 315/aSPAC

**ANALYST** Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Commission on the Status of Women (CSW)
- Department of Public Safety (DPS)

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committees amendment to SB 315 deletes the requirement that an arrest under the provisions of this bill must be made within 24 hours. The amendment also expands the original bill and allows an officer who responds to make an arrest instead of requiring that the officer be at the scene. In addition the amendment adds that there must be exigent circumstances to support making an arrest.

#### Synopsis of Original Bill

Senate Bill 315 amends §31-1-7 NMSA 1978 and gives an officer more flexibility to arrest a person without a warrant when there has been a domestic disturbance. Under current law, an officer may only arrest a person without a warrant when that person is present at the scene of the domestic disturbance.

This bill allows the officer to arrest a person without a warrant within 24 hours of arriving at the scene of the domestic disturbance when that person is not present at the scene and the officer has probable cause to believe that person has committed an assault or battery on a household member.

Significant Issues

This bill gives law enforcement officers more flexibility. If the alleged perpetrator has left the scene of the domestic disturbance, the officer may arrest that person at another location without first obtaining an arrest warrant. The officer will not be delayed waiting for an arrest warrant.

Giving arresting officers more flexibility and shortening the time until arrest makes an arrest more likely. This change may increase the number of domestic violence related criminal cases that are filed in the state courts.

The CSW believes this provision in the law will save peace officers time and effort in obtaining a warrant on an individual who could potentially cause fatal harm to a victim of domestic abuse if that person were not in custody.

The AGO provided the following:

As background, traditionally, the authority of the police to arrest someone without a warrant for commission of misdemeanor crimes has been limited by the “in the presence” requirement. In order for the police to make an arrest without a warrant on a misdemeanor crime, the crime must have been committed in the officer’s presence. The purpose of an in presence requirement is to prevent warrantless arrests based on information from third parties. The “in the presence” requirement also reduces the risk of an erroneous arrest on crimes generally viewed as lacking in sufficient violence, or are of a non-serious nature.

The New Mexico legislature recognized domestic violence as a serious societal problem in this state, and in dealing with this problem, law enforcement must be afforded additional tools by which to quickly and effectively defuse and resolve the situation. Before its enactment, obtaining a warrant required law enforcement to leave the scene to prepare the document and secure judicial approval. Unless the victim was transported to another location, they may well have been left in the presence of the perpetrator, posing a potentially dangerous opportunity for further violence.

As many offenders leave the scene to avoid immediate arrest, law enforcement agencies interpreting current law as prohibiting an arrest unless the suspect is at the scene when the officers arrive, place victims in a dangerous situation. In reality, few officers will ever seek a warrant for a crime involving misdemeanor assault or battery on a household member. Lack of manpower, the number of calls a field officer may have holding, and detectives who are assigned to investigate felony crimes only, are factors contributing to this reality. Another reality is most victims will not go to a shelter, preferring instead to remain in their homes, many times in an attempt to prevent further trauma on children who may have witnessed the violence.

Within Albuquerque, victims have suffered further abuse upon the return of the offender after the police have left the scene. Many offenders will call the victim while the police are still at the scene threatening or intimidating the victim over the phone for having called the police. Victims have been informed by officers at the scene of an assault or battery that when the offender was located around the block or several blocks away that the police had no authority to make an arrest, only a criminal summons could be issued.

Without a definition of “at the scene of a domestic disturbance” it must be noted that agencies adhering to this interpretation may eventually find themselves on the end of a failure to protect lawsuit, should the offender return to the scene and commit further abuse.

It should be noted that other misdemeanor crimes in New Mexico specifically allow an arrest without warrant. For example any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the crime of falsely obtaining services or accommodations or the crime of shoplifting.

This bill is consistent with other misdemeanor crimes allowing arrest away from the scene. The two other misdemeanor crimes do not involve the type and level of violence that is unique to domestic violence. It should also be noted, that in Albuquerque more arrests are made on shoplifting than domestic violence misdemeanors.

It is a general rule that once an officer has the right to arrest without a warrant for a misdemeanor or breach of the peace committed in his presence, he must do so as soon as he reasonably can, and if he delays for purposes disassociated with the arrest or for such a length of time as to necessarily indicate the interposition of other purposes, he cannot arrest without a warrant.

Despite the significance of this amendment, the 24 hour window being proposed will inspire the usual “unconstitutional” objections. The 24 hour window creates an opportunity for arguments that the police will no longer be concerned about the victim’s safety and instead will take their time looking for the offender. Exigency will no longer be a consideration. The rationale behind exigency in domestic violence situations is fear that the victim will be further harmed before a warrant can be obtained. That rationale may no longer be valid given a 24 hour window. As officer shifts are usually of an 8 or 10 hour length, the need for 24 hours will be questioned since once an officer performs a misdemeanor investigation, follow up by officers on the next shift is rare particularly in communities with larger populations due to lack of manpower.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. This change to the statute has the potential to increase the workload of courts, thus requiring additional resources to handle the increase. This increased workload will also apply to the public defenders and district attorneys.

## **OTHER SUBSTANTIVE ISSUES**

The AGO has proposed an amendment that will require probable cause and exigent circumstances in order for an arrest to have been made of an offender who had left the scene. Requiring exigent circumstances is a more palatable version since it will follow established New Mexico law which states that even in felony cases, a warrantless arrest requires both probable cause and exigent circumstances. Most often, law enforcement will pursue an offender committing these two types of misdemeanor domestic violence offenses because they believe that the victim may be under a particular threat of harm.

**POSSIBLE QUESTIONS**

DPS asks if in the process of the investigation does the arresting officer need to be the original officer or can the information be passed along to another officer if it is done in good faith?

DW/yr