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FISCAL IMPACT REPORT

SPONSOR Rehm/Lord/Reeb/Borrego/Garratt **LAST UPDATED** 3/14/2023
ORIGINAL DATE 1/20/2023
BILL
SHORT TITLE Outstanding Warrants Backlog Funding **NUMBER** House Bill 97
ANALYST Rabin/Gray

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
\$0.0	\$20,000.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
\$0.0	Up to \$24.5	\$0.0	Nonrecurring	Metropolitan Court Warrant Enforcement Fund

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
District Attorneys' Offices (excluding 2nd)	\$0.0	\$1,111.1	\$0.0	\$1,111.1	Nonrecurring	General Fund
DFA	\$0.0	\$270.0 to \$450.0	\$0.0	\$270.0 to \$450.0	Nonrecurring	General Fund
DPS	\$0.0	\$300.0 to \$500.0	\$0.0	\$300.0 to \$500.0	Nonrecurring	General Fund
Courts and PDD	\$0.0	Indeterminate but minimal	\$0.0	Indeterminate but minimal	Nonrecurring	General Fund
NMCD	\$0.0	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Nonrecurring	General Fund
County Jails	\$0.0	Indeterminate but minimal	\$0.0	Indeterminate but minimal	Nonrecurring	County General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bill 397
 Partially duplicates appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

New Mexico Attorney General (NMAG)

Department of Finance and Administration (DFA)

Corrections Department (NMCD)

Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 97

House Bill 97 appropriates \$20 million from the general fund to three different agencies for the purpose of reducing the backlog of outstanding felony and misdemeanor warrants. The bill appropriates \$9 million to the Department of Finance and Administration (DFA) for police departments, sheriff's offices, and New Mexico State Police (NMSP) offices within Bernalillo County; \$1 million to the 2nd Judicial District Attorney's Office; and \$10 million to the Department of Public Safety (DPS) for police departments, sheriff's offices, and NMSP offices within any other county or municipality where such funds are needed for warrant backlog efforts.

Notably, this bill specifies the funds are to be used to clear the backlog of outstanding *arrest* warrants, but the vast majority of outstanding warrants are bench warrants.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Given the size of the appropriation, this analysis assumes the intent is to expend the funding on serving both arrest warrants and bench warrants because arrest warrants make up a very small share of outstanding warrants (just 9 percent of state-court-issued warrants in Bernalillo County, a total of 326 warrants). If this is the intention of the bill, the language will need to be amended to allow the funds to be expended on both types of warrants (see "Technical Issues," below). If the intention is only to fund warrant backlog operations for arrest warrants, the appropriation is likely substantially higher than what would be required for such operations.

Appropriation. The appropriation of \$20 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund.

The House Appropriations and Finance Committee Substitute for House Bills 2 and 3, as amended by the Senate Finance Committee (General Appropriation Act), appropriates \$10 million to DFA to distribute to relevant entities for felony warrant enforcement statewide. This appropriation is not contingent on enactment of HB97 or similar legislation.

Revenue Impact. The Metropolitan Court warrant enforcement fund receives fee revenue of \$100 for each warrant served. The Albuquerque Police Department (APD) estimates additional funds of \$5 million would enable it and its law enforcement partners in Bernalillo County to serve 950 warrants in FY24, focusing primarily on felony offenders. Felony warrants are issued by either the Bernalillo County Metropolitan Court (BCMC) or district courts, but no fee is assessed for warrants served in district courts. As a result, the warrant enforcement fee would only be applied to BCMC warrants served. Of the total active felony warrants in Bernalillo County, about 25 percent were issued by BCMC. If 25 percent of the 950 warrants APD expects to serve are issued by BCMC (242 warrants), the metropolitan fund could receive up to \$24.2 thousand in additional revenue.

Because this program is not expected to continue in future fiscal years, these revenue impacts are only anticipated to occur in FY24.

Additional Operating Budget Impact. HB97 provides for the 2nd Judicial District Attorney's Office (serving Bernalillo County) to receive \$1 million to collaborate with law enforcement areas in the county to reduce the warrant backlog, equal to approximately 11 percent of the funding allocated to Bernalillo County law enforcement agencies. However, the appropriation to DPS for other counties may not be allocated to other district attorneys' offices to support efforts by law enforcement in other counties. As a result, any additional work required of other district attorneys' offices to support these efforts would result in an additional operating budget impact on those agencies. Assuming costs to those offices would also equate to approximately 11 percent of the total funding provided to law enforcement agencies, it is estimated these offices could face an additional operating budget impact of \$1.1 million. It is anticipated these costs would be incurred during the time during which warrant backlog operations are being carried out, in FY24.

DFA and DPS will likely face increased costs to manage and distribute the funding appropriated under this bill. The bill does not provide for a proportion of funds to be used to offset costs for administrative agencies. Depending on the complexity of the programs established to determine these distributions, costs to administer these funds could be substantial. Assuming an administrative cost of between 3 percent and 5 percent of funds administered, this analysis estimates DFA could face administrative costs of \$270 thousand to \$450 thousand, and DPS could face administrative costs of \$300 thousand to \$500 thousand. These costs are anticipated to only occur during the time in which funding is distributed, FY24.

Incarceration drives costs in the criminal justice system; Any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The Corrections Department (NMCD) notes a likely short-term impact on its operating budget due to increased arrests, which could result in increases to the inmate population if those warrants resulted in more individuals being sent to prison, but that impact would be reduced after the backlog was reduced. NMCD reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per inmate per year across all facilities. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center.

Although this program is not expected to continue in future fiscal years, the additional operating budget impact to NMCD could continue in future years, depending on the length of prison sentences for additional inmates. Because stays in county jails are less than one year, the additional operating budget impact to counties is only expected to occur in FY24.

Courts and public defenders may also face increased costs if additional warrants are served. It is anticipated these costs would be incurred during the time during which warrant backlog operations are being carried out, in FY24.

SIGNIFICANT ISSUES

Administration and Distribution. HB97 does not provide guidance for how much funding should be distributed by administering agencies (DFA and DPS) to different entities within Bernalillo County and statewide; the 2nd Judicial District Attorney’s Office is the only entity whose share of the funding is defined. DFA and DPS will need to develop a system for determining how much funding is awarded to which eligible entities, which could require significant time and resources. It may be desirable to identify specific amounts for specific entities or to define a process by which funding determinations should be made.

Albuquerque Warrant Proposal. The city of Albuquerque and APD have proposed using additional funds, such as the funding proposed in this bill, to enable its officers to investigate and serve about 950 warrants, primarily warrants tied to violent offenses for which a strong case can be made that the individuals should be detained pending trial.

Warrant Enforcement and Violence. Warrant enforcement increases the risk of violence, both for law enforcement officers and the public. In 2020, about 60 percent of federal law enforcement homicides—when a federal law enforcement officer killed a person justifiably or not—occurred during the enforcement of a warrant.¹ Similarly, about 6 percent of law enforcement officer deaths—when an officer was killed—occurred when serving a felony warrant.²

RELATIONSHIP

HB97 relates to House Bill 387, which appropriates \$20 million to reduce the backlog of outstanding felony warrants, but makes different allocations than HB97.

HB97 relates to a \$7 million appropriation in the General Appropriation Act for felony warrant enforcement statewide. This appropriation is not contingent on enactment of HB97 or similar legislation.

TECHNICAL ISSUES

The term “arrest” in Section 1 of HB97 precludes the use of these funds to reduce the backlog of outstanding bench warrants, which does not appear to align with the intent of the bill given the size of the appropriation. Removing this term would allow the funds to be expended for operations targeting both bench and arrest warrants.

¹ See Bureau of Justice Statistics, Federal Law Enforcement Agency Deaths in Custody Reporting Program, fiscal year 2020.

² See the National Law Enforcement Officers Memorial Fund 2022 report.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts (AOC) reports that there were 206.9 thousand warrants issued by state courts in the court database as of January 9, including 16 thousand felony warrants. According to preliminary data provided by AOC, a total of 3,796 felony warrants tied to 3,188 individuals were active as of that date in Bernalillo County (issued by the 2nd Judicial District Court and Bernalillo County Metropolitan Court), of which 2,172 warrants tied to 1,611 individuals were issued prior to 2020. In total, 57 percent of active felony warrants issued by state courts in Bernalillo County are over two years old and 37 percent are more than eight years old.

AOC notes outstanding warrants may include people who are deceased, incarcerated, or have moved to a different address and suggests these issues be addressed prior to appropriating funds for enforcement.

Warrant Types. Arrest warrants are issued at the request of law enforcement with the goal of arresting an individual believed to have committed a crime. Arrest warrants represent a very small share (9 percent) of active warrants in Bernalillo County, with the remaining 91 percent comprising bench warrants. Bench warrants are issued by a judge based on an individual's failure to comply with an order of the court, including appearing for hearings, complying with conditions of release, or complying with conditions of probation. About a third (35 percent) of all active felony warrants in Bernalillo County are for failure to appear and 15 percent are for probation violations, while 42 percent are for failures to comply with other orders. AOC reports individuals arrested on bench warrants are typically detained for a short period of time (one to two days) until a hearing can be held, and are usually released after the hearing.

Case Types. Bench warrants associated with cases involving property crimes and drug crimes make up the largest share of all active felony warrants in Bernalillo County. A total of 509 active bench warrants, 13 percent of all active felony warrants in the county, are related to cases in which an individual was charged with "simple" possession of a controlled substance (possession without distribution or trafficking or intent to distribute or traffic). A total of 20 active bench warrants relate to possession or distribution of marijuana.

Warrant Age. Most active warrants issued by state courts in Bernalillo County are over two years old, and over a third (37 percent) are over eight years old. The oldest active warrants are from 1971 and are all bench warrants, including one related to a charge of aggravated assault, two related to kidnapping, and two related to murder. The oldest active arrest warrant was issued in 2000; the 403 warrants issued prior to 2000 are all bench warrants. Most active arrest warrants were issued in 2019 (124) and 2018 (61), which together comprise 57 percent of all active arrest warrants.

Other Sources of Warrants. Not all warrants are issued by state courts and tracked in AOC's database. Other entities empowered to issue warrants include magistrate, tribal, and federal courts, as well as adult probation and parole officers. All warrants are entered into the Department of Justice's National Crime Information Center (NCIC) system, which allows law enforcement to access warrants from all sources. It does not appear possible to pull aggregate reports of all warrants from NCIC.

Other Issues. The Administrative Office of the District Attorneys notes that because funding is nonrecurring, it will not allow agencies to hire additional personnel for warrant backlog operations.

ALTERNATIVES

AOC notes the following potential alternate sources of funding for warrant enforcement:

- Law enforcement agencies can be reimbursed for the purpose of serving warrants from the Metropolitan Court warrant enforcement fund (Section 34-8A-12(C) NMSA 1978).
- Law enforcement agencies can be reimbursed for the purpose of serving warrants from the magistrate court warrant enforcement fund (Section 35-6-5(C) NMSA 1978).
- Some municipalities, including Clovis, Las Cruces, Los Alamos, Rio Rancho, and Santa Fe, have ordinances that provide for reimbursement to law enforcement for the expense of serving warrants through the municipality warrant enforcement funds.

DPS suggests DFA is better equipped to distribute statewide funding for law enforcement agencies and suggests that duty be assigned to DFA.

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