

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 331 amends Section 29-3A-2 NMSA 1978, the definitions section of the Criminal Record Expungement Act, to add a definition of “domestic violence crime”. That definition includes the following offenses:

- Assault against a household member, Section 30-3-12 NMSA 1978;
- Aggravated assault against a household member, Section 30-3-13 NMSA 1978;
- Assault against a household member with intent to commit a violent felony, Section 30-3-14 NMSA 1978;
- Battery against a household member, Section 30-3-15 NMSA 1978;
- Aggravated battery against a household member, Section 30-3-16 NMSA 1978;
- Criminal damage to the property of a household member or deprivation of the property of a household member, Section 30-3-18 NMSA 1978; and
- Violating an order of protection granted by a court under the Family Violence Protection Act, Section 40-13-6 NMSA 1978.

HB 331 enacts a new section of the Criminal Record Expungement Act, Section 29-3A-10 NMSA 1978, “Expungement of records upon acquittal or dismissal with prejudice – domestic violence crimes.” This section allows a person charged with a domestic violence crime who is acquitted or whose charge is dismissed with prejudice to request expungement of all public records and arrest records related to the person’s charge by submitting a written request to the court that entered the acquittal or dismissal with prejudice. It requires that the court then order the expungement within 30 days of the date of the order and deliver that order to all relevant law enforcement agencies and courts. Section 29-3A-10 requires that the order prohibit law enforcement agencies and courts from releasing copies of the expunged records without court order and requires that law enforcement agencies and courts notify the court and the person requesting expungement when the expungement is completed. The new section also prohibits charging the person requesting the expungement any fees for submitting the request or the expungement process.

HB 331 amends Section 29-3A-7 NMSA 1978 to exclude arrest records for a domestic violence crime from required disclosure in connection with an application or query related to employment with a financial institution post-expungement.

HB 331 also amends Section 29-3A-4 NMSA 1978 to make conforming changes.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Recent court data indicates that charges are frequently brought for the offenses included in House Bill 331 as “domestic violence crimes”; many of those charges result in dismissals, and some result in acquittals. The court data currently available does not consistently indicate whether a dismissal is with or without prejudice, so the dismissal numbers below do not reflect how many total cases would be eligible for expungement, but are included because at least some of those cases would likely be eligible, which provides some perspective on how many individuals could be eligible for expungement under HB 331.

In FY 2024, the most recent year for which complete court data is available to the NMSC, there were 458 cases filed with a lead offense of assault against a household member pursuant to Section 30-3-12 NMSA 1978. 374 of those cases have been closed. Of those, there was one acquittal and 342 dismissals.

In the same year, there were 574 cases filed with a lead offense of aggravated assault against a household member pursuant to Section 30-3-13 NMSA 1978. 464 of those cases have been closed. Of those, there were 0 acquittals and 281 dismissals.

For cases of assault against a household member with intent to commit a violent felony pursuant to Section 30-3-14 NMSA 1978, we combined data from FY 2023 and FY 2024 because there were only 9 cases in FY 2024. Using data from both years provides more data about case outcomes. In FY23 and FY24, there were 24 cases filed with a lead offense of assault against a household member with intent to commit a violent felony pursuant to Section 30-3-14 NMSA 1978. Of the 16 closed cases, there were 0 acquittals and 8 dismissals.

In FY 2024, there were 6,510 cases filed with a lead offense of battery against a household member pursuant to Section 30-3-15 NMSA 1978. Of the 5,293 closed cases, there were 25 acquittals and 4,883 dismissals.

In FY 2024, there were 2,002 cases filed with a lead offense of aggravated battery against a household member pursuant to Section 30-3-16 NMSA 1978. Of the 1,750 closed cases, there were 3 acquittals and 1,155 dismissals.

In FY 2024, there were 869 cases filed with a lead offense of criminal damage to the property of a household member or deprivation of the property of a household member pursuant to Section 30-3-18 NMSA 1978. Of the 705 closed cases, there were 3 acquittals and 596 dismissals.

In FY 2024, there were 1,089 cases filed with a lead offense of violating an order of protection granted by a court under the Family Violence Protection Act pursuant to Section 40-13-6 NMSA 1978. Of the 829 closed cases, there were 6 acquittals and 616 dismissals.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS