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FISCAL IMPACT REPORT

SPONSOR Cote ORIGINAL DATE 02/11/10
LAST UPDATED _____ HM 58
SHORT TITLE Consequences of Domestic Violence Conviction SB _____
ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General Office (AGO)
Regulation and Licensing Department (RLD)
Children Youth and Families Department (CYFD)
Public Education Department (PED)
Board of Nursing (BON)

SUMMARY

Synopsis of Bill

House Memorial 58 requires the New Mexico Domestic Violence Leadership Commission to study the consequences of a conviction of domestic violence to the professional licensure or certification, including the extent to which licensure or certification restrictions may be imposed on law enforcement, law, education, health care and other professions identified by the commission following a domestic violence conviction. The commission must identify whether other states impose such restrictions and assess the potential effectiveness of imposing restrictions. The findings of the commission must be reported to the governor and appropriate interim legislative committee by November 2010.

FISCAL IMPLICATIONS

Agencies did not anticipate a fiscal impact related to this memorial.

SIGNIFICANT ISSUES

CYFD contributes background on the problem:

According to the Incidence and Nature of Domestic Violence In New Mexico VIII by Betty Caponera, 1 in 3 women and 1 in 7 men will experience domestic violence in their lifetime. The report states that there was a child present at the scene of 62% of domestic violence incidents in 2008.

According to the *National Center for Women and Policing*, forty percent of America's law enforcement officer families experience domestic violence. A victim of a police officer is particularly vulnerable because they fear calling the police as the case will be handled by colleagues or friends and they fear that responding officers will side with the abuser and fail to properly investigate or document the crime.

According to the National Violence Against Women Survey domestic violence is underreported due to the victims fear of being re-victimized and the belief that nothing could or would be done on their behalf.

When those who need help the most doubt the integrity of individuals in their community who are charged with providing protection it undermines the effectiveness of the agency and puts all citizens at risk. The memorial would help to encourage institutionalization of a zero tolerance for domestic violence.

The BON offers the following information:

The New Mexico Board of Nursing is authorized to license Licensed Practical Nurses, Registered Nurses, Certified Nurse Practitioners, Clinical Nurse Specialists, and Certified Registered Nurse Anesthetists. In addition, the Board is authorized to issue certificates to hemodialysis technicians and medication aides.

The Board of Nursing currently requires all applicants for licensure to respond to the following question: "Have you ever been convicted of a felony or are you now charged with a felony in any state or federal court?" If the applicant answers "yes" to this question, all relevant legal documents must be submitted with the application. There are instances in which the applicant will answer "no" to this question but the Board will receive information from either the state (Department of Public Safety) or federal government (FBI) indicating prior criminal convictions. Regardless of whether the applicant/licensee self-discloses or information is received from official agencies, the Board of Nursing utilizes a process to review the conviction and determine whether to deny licensure or impose other consequences. Individuals are afforded due process in accordance with the Uniform Licensing Act and the New Mexico Nurse Practice Act and Rules. The Executive Director of the Board of Nursing reviews each report of criminal charges in concert with the Board legal counsel. The circumstances of the conviction are thoroughly reviewed so that each individual situation is evaluated. Any applications that warrant further review are presented to the Board of Nursing for possible disciplinary action and/or consideration of the status of the license. It should be noted that certificate holders (Certified Medication Aides and Certified Hemodialysis Technicians) are not currently required to submit finger print cards with their applications.

AOC notes the following related to the legal profession:

The Office of Disciplinary Counsel is the investigative body for the Disciplinary Board. The Disciplinary Board is an agency of the Supreme Court of New Mexico. The Office of Disciplinary Counsel looks into complaints about attorneys licensed to practice law in New Mexico to determine whether the attorneys have violated the Rules of Professional Conduct. The Supreme Court has ultimate authority over the discipline imposed and may accept, reject, or modify the Disciplinary Board's recommendation.

The Judicial Standards Commission is an independent commission created in 1968 by an amendment to the New Mexico Constitution. The commission investigates allegations of misconduct by judges, conducts hearings, and recommends sanctions to the state Supreme Court. The Supreme Court has superintending control over all judges.

RLD adds for the boards and commissions attached to that agency:

This study and any subsequent recommendation to change licensing statutes to impose restrictions on licensure or certification of persons who are convicted of domestic violence would have a significant impact on RLD licensure procedures.

For example, most professional licensure laws do not authorize the respective state agency to require applicants for licensure or renewal submit to a criminal background check. In fact, licensure for counseling, social work and osteopathy does not include submitting to criminal background checks. These professionals are asked to self-disclose such information on their initial application or renewal. If the applicant truthfully discloses a crime the applicant is asked to submit court documents and an explanation of the charges.

Although the Commission would likely request such evaluation and analysis, the memorial does not require the Commission to consult with RLD or any other professional state regulatory agency.

PED identifies a statute, [**28-2-4. Power to refuse, renew, suspend or revoke public employment or license.**](#) that currently address this problem.

OTHER SUBSTANTIVE ISSUES

Proposed legislation would codify into law the Domestic Violence Leadership Commission which was created by Governor Richardson through Executive Order 2007-041. Senate Bill 26 creates the New Mexico Domestic Violence Leadership Commission to be administratively attached to the Children, Youth and Families Department. The commission will consist of twenty-three members appointed by the governor.

MW/svb