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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/11

SPONSOR King LAST UPDATED \_\_\_\_\_ HB 457

SHORT TITLE Subpoenas for Certain Investigations SB \_\_\_\_\_

ANALYST Segura

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
 Children, Youth and Families Department (CYFD)  
 Attorney General's Office (AGO)  
 Administrative Office District Attorney (AODA)

### SUMMARY

House Bill 457 provides for administrative subpoenas for investigations involving an electronic communication system or service or a remote computing service; provides for administrative subpoenas to financial institutions.

The AGO indicates that House Bill 457 provides for a prosecutor to issue an administrative subpoena for the investigation of crimes involving the Sexual Exploitation of Children Act, the Computer Crimes Act, the Money Laundering Act, child solicitation by a computer, or obtaining identity by electronic fraud and has reasonable suspicion that an electronic communication system or service or remote computing service has been used in the commission of the criminal offense consistent with 18 U.S.C. 2702 and U.S.C. 2703. The bill also provides that a prosecutor

may issue a subpoena duces tecum to a financial institution to obtain account records or affidavits of dishonor in an investigation or prosecution of crimes related to the Controlled Substances Act, the Racketeering Act or the Money Laundering Act.

### **FISCAL IMPLICATIONS**

House Bill 457 does not contain an appropriation.

### **SIGNIFICANT ISSUES**

According to AGO House Bill 457 provides a more efficient investigative tool for the listed crimes rather than the current existing process for a prosecutor to obtain a grand jury subpoena. Also, this bill does not prevent a prosecutor from obtaining a grand jury subpoena duces tecum for any records that are held by a New Mexico bank, savings and loan association or credit union or transmitter.

Three criminal investigative entities in New Mexico have statutorily created authority to issue administrative subpoenas for criminal violations:

- The Securities Division
- The Taxation and Revenue Department
- The governor’s Organized Crime Prevention Commission.

The Public Defender Department raises the issue that to the extent that Section 2(E) and (F) purport to create rules of evidence for the District Courts, they may , if they are found by the courts to conflict with the Rules of Evidence, a violation of the separation of powers set out in the State Constitution.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AODA states “All subpoenas for investigations would have to continue to be sought through the grand jury. This can be a very time consuming process for the grand jury, the prosecutor and the law enforcement witness. Administrative subpoenas would save time and money”.

RS/svb