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FISCAL IMPACT REPORT

SPONSOR Torraco **ORIGINAL DATE** 2/14/15
LAST UPDATED _____ **HB** _____

SHORT TITLE Domestic Violence Predominant Aggressor **SB** 408

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Defender Department (PDD)
- Department of Health (DOH)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General’s Office (AGO)
- New Mexico Sentencing Commission (NMSC)
- New Mexico Corrections Department (NMCD)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 408 would amend various New Mexico statutes to require police training on predominant aggressors in domestic abuse situations. It would require responding officers to determine whether there was a predominant aggressor in such situations and to note who it was, underscoring that police need not arrest another person alleged to have committed an assault or battery. Officers are to consider prior complaints, relative severity of injuries, seriousness of threats, likelihood of future injury and whether a party acted in self-defense.

FISCAL IMPLICATIONS

DPS stated “There is no apparent fiscal impact to the department. The New Mexico Law Enforcement Academy already teaches domestic abuse training so if this bill is passed the curriculum for the police officer basic, Certification by Waiver (CBW) and the biennium training

will only need to be adjusted. The same applies to the operational elements of DPS. Current certified officers receive in-service training on a routine bases and the new requirements can be added to in-service training.”

SIGNIFICANT ISSUES

AODA provided the following:

SB 408 would direct law enforcement officers who receive complaints of domestic violence from two or more opposing persons to determine who the “predominant aggressor” was. To determine that officers would be required to consider: “...(1) any prior complaints of domestic violence; (2) the relative severity of injuries inflicted on each person; (3) the seriousness of any threats creating fear of serious injury to another household member or another person; (4) the likelihood of future injury to each of the parties; and (5) whether one of the parties acted in self-defense.” The definition of predominant aggressor in the bill is “the most significant, rather than the first, aggressor at the scene of competing claims of domestic violence.” Predominant aggressor is to be given the same meaning in both the Criminal Procedure Act and the Family Violence Act but deciding who was the “most significant” aggressor leaves room for interpretation of that phrase.

Unless a weapon was used, it seems likely that using the criteria listed above to determine at the scene who was the most significant aggressor then it would presumptively be a male, if nothing else, because their usually superior size and strength would enable them to inflict more serious injuries in the incident and in the future. But the most significant aggressor can be, and sometimes is, a female victim who inflicts a more serious injury, or even death, on her male partner. However, depending upon the facts, she may be entitled to claim self-defense and use what is sometimes referred to as a battered wife defense.

Most domestic violence cases are not witnessed by anyone besides the two people involved, and those involved frequently have consumed alcohol or drugs so, in addition to their personal biases, their reliability as witnesses is questionable. That adds to the challenge of assessing the validity of a claim of self-defense and determining the weight to be given to most of the other specified criteria for deciding who the primary aggressor was.

SB 408 would substitute “domestic abuse incident” for “domestic disturbance” in the section of the Criminal Procedure Act that permits an arrest as an exception to the warrant ordinarily required for a misdemeanor not committed in the officer’s presence. If the bill intended to incorporate the other forms of “domestic abuse,” which are listed in the definition in the Family Violence Act, as additional exceptions that is not clear.

If adopted the bill does not mandate that only the predominant aggressor be arrested. It only encourages responding officers to analyze each domestic abuse incident but would still permit more than one person to be arrested. When opposing parties are both arrested it causes special challenges for the prosecution. Fact finders assessing competing claims can have a reasonable doubt about who was responsible if both defendants are charged. In addition, prosecutors usually have to send one of the cases to a conflict prosecutor, or to make special arrangements with one of the defendants so they

can confer with them without violating the prohibition against speaking to a defendant with pending charges.

NMSC provided the following:

According to the Battered Women’s Justice Project, 34 states have statutes that use “primary” or “predominant” or “principle” aggressor language. The remaining 16 states have no such statute in their laws. Alaska, Iowa, Nevada, and Rhode Island employ statutory definitions that are consistent with Black’s legal definition of aggressor as the person “who first employs hostile force.” In four other states (Florida, Maryland, South Carolina, and Utah) the domestic violence statutes refer to “predominant aggressor” or “primary aggressor” without defining the terms or providing criteria for making a determination.

DOH provided the following:

According to Incidence and Nature of Domestic Violence in New Mexico XIII: An Analysis of 2013 Data from the New Mexico Interpersonal Violence Data Central Repository (Caponera, 2014), 34 percent of women and 15 percent of men in New Mexico have experienced domestic violence. Forty-three percent of law enforcement-reported domestic violence cases involved injury to the victim. Forty-one percent of domestic violence incidents were reported to police, making law enforcement officers the first responders to many abuse incidents. SB 408 strengthens NM Statute 40-13-1.1, which discourages dual arrests of persons involved in incidents of domestic abuse. Dual arrests could occur, for example, when the abused party acts in self-defense and injures her or his attacker. SB 408 stipulates that law enforcement officers be trained in the identification and arrest of the predominant aggressor, increasing the likelihood that the individual posing the greatest threat is prevented from causing further injury, and that an individual posing no further threat is not unnecessarily removed from the home.

The National Institute of Justice reports that a major re-examination of fairly rigorous experiments in multiple jurisdictions finds that arrests deter re-abuse. In none of the study sites were arrests associated with increased re-abuse against partners. Data on police action in 2,819 jurisdictions in 19 states reveal that 1.9 percent of incidents resulted in dual arrests for intimate partner violence and intimidation, and less than 4 percent of intimate partner arrests in which law enforcement could not determine a primary or predominant aggressor. If the rate of dual arrests exceeds that found on average across the country, law enforcement departments are recommended to develop and implement specific primary aggressor policies and protocols (Klein, Andrew R. Practical implications of current domestic violence research: For law enforcement, prosecutors and judges. Office of Justice Programs, US Department of Justice, 2009).

There are numerous negative outcomes for victims who are arrested as a result of a domestic violence incident, including increased vulnerability to manipulation by a perpetrator, decreased safety for both the victim and her/his children, mental and psychological distress, and potential loss of employment. (Arresting practices: exploring issues of dual arrest for domestic violence, R Braaf and C Sneddon, 2007)

Preventing further domestic violence has significant implications for public health.

Caponera (2014) reports that children were present at the scene in 32 percent of domestic violence incidents in 2013. Children, as well as those who witnessed domestic violence as a child, have increased risk of experiencing and perpetrating abuse as an adult, and are at elevated risk for abusing substances and developing chronic disease.

TECHNICAL ISSUES

Section 2 of the bill moves the definition of “household member” in the Criminal Procedure Act to appear just above the provision that “predominant aggressor” has the same meaning as in the FVPA. However, the full definition of “household member” appears in both acts; this is either duplicative or inconsistent with defining the meaning of the “predominant aggressor” term by referring to the other act.

EC/bb/aml