

LFC Requester:	CHENIER, ERIC
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/29/2013
Bill No: HB 301--305

Sponsor: Rep. Candy Spence Ezzell **Reviewing** Attorney General's Office
Short Domestic Disturbance **Person Writing** MBaber
Title: Definitions **Phone:** 827-6650 **Email** mbaber@nmagt.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

HB 301 addresses the domestic violence issues raised in St. v Almanzar, NM Court of Appeals case number 30,600. “At the scene” is defined to provide effective apprehension and prosecution of domestic violence offenders. “Domestic abuse” is defined and tracks current statutes including assault and battery, stalking and harassment, trespass, criminal damage to property and most definitions of abuse in Family Violence Protection Act, NMSA 40-13-2.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

NA. This bill does not increase the number of crimes nor does it increase the penalties for domestic violence crimes

SIGNIFICANT LEGAL ISSUES

Warrantless arrest in domestic violence cases has been a powerful tool in combating the state and national epidemic of domestic violence crimes. Historically, domestic violence abusers have been able to commit abuses, repeatedly, without fear of arrest. Police officials have referred to a typical domestic violence scenario as “hit and run”. The abuser could inflict some misdemeanor level of injury to the victim, run away from the scene, wait until the police came and left, and then return to abuse the victim again. The abuser would then flee the scene again, waiting for the police to arrive and leave again. This cycle could repeat over and over, often during a single evening. It was not common or usual for understaffed law enforcement to obtain an arrest warrant for misdemeanor level domestic violence. Therefore, the abuser was able to repeat the abuse over and over without fear of being arrested.

In 1979, pursuant to NMSA 31-1-7, Arrest without Warrant, police were able to arrest a person and take that person into custody **without a warrant** when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or battery upon a household member. In 1987, the NM Family Violence protection Act, NMSA 40-13-1 et. seq. codified a law enforcement officer’s ability to arrest **without a warrant** and take into custody a restrained person whom the peace officer has probable cause to believe has violated an order of protection. In the FVPA, there is no “at the scene” requirement.

These two provisions combined to make domestic violence arrests more frequent, thus, preventing or discouraging repeated abuse in a short time period. Arrest of offenders also provided **some immediate consequence for the misdemeanor behavior**, and as a result victims began to have more confidence in the legal system.

Law enforcement agencies and prosecutorial agencies have long considered “at the scene” to mean a variety of circumstances, not limited to the physical location at which the abuser abused, hit or injured the victim. Generally, police officers go to the location of the complaining victim, which may have be at a safe location, not at the original scene of the crime, such as the home of

the victim's parents. The police would then attempt to locate the accused within the time frames of the police shift, or within the next few hours. Otherwise, the victim and others such as children, would be required to remain in the danger zone until police arrived, placing everybody at risk for more abuse.

In State v Almanzar, the domestic violence incident occurred at Tingley Coliseum. The victim called the police and was located at a nearby Walgreens. The police located the accused at a nearby Circle K. During the pat down of the accused police found cocaine. Defendant was charged with possession of cocaine, a felony. Domestic violence charges were not filed, unknown reason. However, the officer testified that had he not found the cocaine, he would have arrested the defendant for domestic battery. The defendant moved to suppress the evidence of cocaine. The District Court denied the defendant's motion.

The Court of Appeals suppressed the cocaine, noting that the arrest was improper because NMSA 31-1-7(A) does not authorize an officer to make a warrantless arrest of a suspect at another location away from the scene of a domestic disturbance."

This ruling has caused great concern amongst domestic violence prevention agencies and concern by law enforcement. Although the intent of the ruling was to suppress the cocaine, the ruling actually impacted domestic violence cases in a broad and counter-productive way. The New Mexico Supreme Court has granted certiorari on November 5, 2012

Section D. (1) of the proposed bill is intended to amend the law to give a reasonable range of arrest potential to law enforcement. In reality, the proposed amendment codifies the procedure already used by many law enforcement agencies for several years, a procedure encouraged and promulgated by prosecutors and domestic violence prevention entities.

See Attorney General Opinion 05-05, Patricia Madrid by Arthur Pepin, Director of Criminal Appeals. "Although a legislative change to make the law even clearer would be helpful, the arrest authority as provided in current law appears to be limited by what is reasonable under the circumstances."

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

Related to SB 262, Cervantes, Making Strangulation and Suffocation third degree felonies

TECHNICAL ISSUES OR DRAFTING ERROR

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OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

St.v.Almanzar, widely considered a setback for domestic violence apprehension and prosecution, will remain in effect.

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AMENDMENTS NEEDED TO IMPROVE THIS BILL

1. Add most types of abuse enumerated in NMSA 40-13-2.

2. Insert the phrase” including but not limited to...” to cover other types of abuse not specifically enumerated. Some abusers are highly creative. For example, abuse of pets has been a documented form of domestic abuse and control for more than 30 years. See Duluth Model, Power and Control Wheel, 1984.