

LFC Requester:	Eric Chenier
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto: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	<input checked="" type="checkbox"/>	Amendment	<input checked="" type="checkbox"/>	Date	<u>January 28, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>SB 147</u>

Sponsor:	<u>Sen. Mimi Stewart</u>	Agency Code:	<u>Attorney General's Office</u>
Short	<u>Requiring the AG to</u>	Person Writing	<u>Tony Long, AAG</u>
Title:	<u>Prosecute Law Enforcement</u>	Phone:	<u>505/222-9020</u> Email <u>tlong@nmag.gov</u>

**SECTION II: FISCAL IMPACT**

**\*There would be a significant and currently unquantifiable impact if SB 147 would be enacted and there is no appropriation attached to this bill**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

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

**BILL SUMMARY**

Synopsis: SB 147 is an act relating to law enforcement; requiring investigation or prosecution by the Attorney General of any action against a law enforcement officer suspected of a violent felony, assault against a household member, abuse of a child or any crime for which registration under the sex offender registration and notification act is required.

The act amends NMSA §8-5-2. Previously, the act had eleven (11) subsections A through K. Those subsections are now numbered. There is a new subsection B in the act. Throughout the act, it replaces the gender specific pronouns of him and his with “the attorney general”.

In subsection 3, formerly subsection C, it changes the language “...in his official capacity;” to “...in the officer’s, head’s or employee’s official capacity;”

In subsection 4, formerly subsection D, it changes the language “...by the legislature or any branch thereof” to “...by the legislature or any branch of the legislature”.

Subsection B of the act mandates that the Attorney General (AG) investigate or prosecute any law enforcement officer of the state, any county, any municipality or other political subdivision of the state. The AG shall investigate or prosecute when the officer is suspected of committing a violent felony (as defined by the Criminal Sentencing Act), assault against a household member, abuse of a child or any crime that would require the officer to register as a sex offender.

**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**

The overriding issue with the addition of subsection (B) as drafted in SB 147 is that it mandates that the Attorney General's Office is the sole agency allowed to investigate and prosecute violent crimes committed by any law enforcement officer in any agency thorough the state where the law enforcement officer is suspected of committing a crime.

This language is over-broad and usurps the authority of the elected district attorneys, local law enforcement, and state police who are uniquely trained and equipped to respond to these critical cases within their local jurisdictions. Moreover, there is no provision providing for the assistance of these agencies in these critical investigations, nor does the Attorney General's office have investigators housed in every jurisdiction throughout the state making successful first responding and initial evidence preservation, gathering, and response an impossibility. Cases of a violent nature enumerated in SB 147 require immediate response, gathering of initial statements, and preservation of initial evidence at the onset which is a critical stage in the investigation; waiting for investigators to be dispatched from a location which could be a travel distance of a whole day away compromises the integrity of an investigation and the ultimate success of a subsequent prosecution. If this bill were enacted, there is a high likelihood that critical evidence and statements would be lost thereby compromising successful prosecutions – thereby achieving the opposite result intended.

Assault against a household member is a petty misdemeanor (NMSA §30-3-12). Many of the other crimes listed in Subsection B are 1<sup>st</sup> and 2<sup>nd</sup> degree felonies. As currently drafted, it is unclear if the act was meant to include all crimes of domestic violence or only assault against a household member. There are intrinsic ambiguities in delineating specific crimes within the bill, however as written it appears to exclude other crimes against a household member under the Crimes Against Household Members Act, and other crimes not specifically named but associated with domestic violence such as Violation of an Order of Protection, Aggravated Stalking, Stalking, Harassment, Criminal Damage to Property. Because of the inherent danger and risk to victims of domestic violence, lack of initial response and immediate investigation compromises victim safety. There is considerable ambiguity in what crimes the bill contemplates because the list is not specific or exhaustive. Moreover, initial responders will be confused by the lack of clarification and will question their authority to respond, intervene, or offer any assistance at the critical stages.

## **PERFORMANCE IMPLICATIONS**

As drafted, SB 147 requires the AG to investigate or prosecute a law enforcement officer that is suspected of committing a number of crimes that are likely to result in the loss of a job and the end of a career for the law enforcement officer. Because of the consequences are so grave for the law enforcement officer, these cases may often result in lengthy and costly litigation. The act provides no appropriation for the additional staff, which may impact the agency's other performance based budget targets.

## **ADMINISTRATIVE IMPLICATIONS**

As drafted, SB 147 requires the AG to investigate or prosecute a law enforcement officer that is suspected of committing a number of crimes. Because the consequences are so grave for the law enforcement officer, these cases may often result in lengthy and costly litigation. The act

provides no appropriation for the additional staff, satellite offices, mobile crime units, and training, which would highly impact the agency's other performance based budget targets.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

#### **TECHNICAL ISSUES**

As the bill is currently drafted, the Attorney General is tasked with investigating or prosecuting. The language might be interpreted to give the Attorney General an option of investigating but not prosecuting, or prosecuting but not investigating.

#### **OTHER SUBSTANTIVE ISSUES**

There are already statutory and procedural mechanisms in place for local law enforcement and local district attorneys to deal with law enforcement officers suspected of committing a crime. The Attorney General's Office may be a part of this process at the discretion of the elected official, but cannot supplant their authority. Local police departments, county sheriffs, and state police can likely handle, and may be better equipped to act as first responders and investigators within their communities. Likewise, local district attorneys are elected by their constituents to enforce the laws and prosecute crimes in their county jurisdiction. If the local district attorney feels there is an ethical conflict of interest, or other legitimate reason, they maintain the option of referring the matter to the Office of the Attorney General in their discretion, as they have been elected to exercise in their jurisdiction.

#### **ALTERNATIVES**

N/A

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

Status quo

#### **AMENDMENTS**

N/A