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FISCAL IMPACT REPORT

SPONSOR: Altamirano DATE TYPED: 01/26/01 HB _____
 SHORT TITLE: Abolish Jury Trials in Certain Cases SB 77
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (DA)

SUMMARY

Synopsis of Bill

This bill abolishes the statutory right to a jury trial in magistrate court cases where the offense is contempt of magistrate court or the prosecution of offenses or combinations of offenses for which the potential maximum aggregate penalty is imprisonment for ninety days or less.

Significant Issues

The amendment proposed to Section 35-8-1 NMSA 1978 would make the right to trial by jury in magistrate court criminal cases more consistent with the right to trial by jury in metropolitan court criminal cases and municipal court. Currently, there is uncertainty in the law if someone can request a jury trial in magistrate court for a penalty assessment misdemeanor. Several district courts have granted jury trials in traffic cases based on the language of the statute.

Section 35-8-1 NMSA 1978 states that "[Except for contempt of the magistrate court, the right to trial by jury exists in all actions in the magistrate court which are within magistrate trial jurisdiction." In contrast, in metropolitan court "if the penalty does not exceed ninety days' imprisonment (or if the penalty is a fine or forfeiture of a license,) the action shall be tried by the judge without a jury." Section 34-8A-5(B) NMSA 1978. Similarly, there is no right to a jury trial in municipal court. The maximum penalty of imprisonment shall not exceed ninety days for any one offense except for DWI cases and violations of an industrial user wastewater pretreatment ordinances. See Sections 3-17-1 and 35-15-3 NMSA(C)1978.

FISCAL IMPLICATIONS

This bill will save the court the costs of the juries. Juries in magistrate court are made up of six persons. Each juror is paid minimum wage and mileage.

ADMINISTRATIVE IMPLICATIONS

This bill will save the magistrate courts administrative time that would be spent summoning, impaneling, qualifying and orienting jurors in these types of cases.

OTHER SUBSTANTIVE ISSUES

The Office of the District Attorney believes that a constitutional challenge may arise because the act would allow a defendant to potentially be convicted by a non-lawyer judge.

However, case law from around the country suggests that a conviction by a non-lawyer judge is not a violation of a defendant's due process rights if the conviction is subject to a meaningful appeal. Although California has held that it is a violation of the due process clause, the Supreme Courts of Arizona, South Carolina and Wyoming have decided that the due process clause is not violated when a non-lawyer judge presides over a criminal trial if the decision is subject to meaningful review. The Georgia, Illinois Court of Appeals have agreed. See Gordon v. Justice Court, 525 P.2d 72 (Cal. 1974); Palmer v. Superior Court, 560 P.2d 797, 799 (Ariz. 1977); State v. Duncan, 238 S.E.2d 205 (S.C. 1977); Canaday v. State, 687 P.2d 897 (Wyo. 1984); Walker v. State; 420 S.E.2d 17 (G.A. Ct. App. 1992); People v. Sabri, 362 N.E.2d 739 (Ill. Ct. App. 1977).

The Office of the District Attorney also noted that the New Mexico Supreme Court rules for the Magistrate Courts allows a jury trial in petty misdemeanor cases where the offense is punishable by no more than 6 months in jail.

While there appears to be a conflict, it is generally accepted that according to the separation of powers doctrine, that the judiciary has the power to promulgate supervisory and administrative court rules and the legislative may not interfere. However, since the right to a jury trial does not appear to be a supervisory or administrative rule, the Supreme Court will likely be forced to change its rules.

The Office of the District Attorney further noted that the right to trial by jury is preserved as it existed at the time of adoption of the New Mexico Constitution. If a particular misdemeanor carried with it a right to trial by jury at the birth of statehood, that right cannot be taken away with a legislative act.

Although the determination of what offenses carry a constitutional right to trial by jury, the New Mexico Supreme Court has noted that petty misdemeanors during the territorial period were generally subject to "summary prosecutions," in other words, without the right to a jury. See Gutierrez v. Gober, 43 N.M. 146 (1939).

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