

jury target notice include essential facts of the case, and state the target’s right to notify the grand jury of exculpatory evidence. Finally, HB226 would authorize district courts to review all grand jury proceedings and dismiss indictments without prejudice if the new provisions were violated during the proceeding.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

It is difficult to project the fiscal implication of HB226 as amended on the state. The bill establishes additional judicial review of grand jury proceedings, which may increase workload for judges and court staff if a significant number of cases are submitted for additional review. Additionally, the higher standard of evidence admissible in grand juries may strain prosecutors already struggling to meet tight deadlines, necessitating more time and resources spent vetting evidence or obtaining expert opinions.

However, the National Center for State Courts (NCSC) found that when prosecution agencies “front load” case work, or better prepare for trials earlier, time and resource savings are incurred by all justice partners throughout the life of a case. For example, if an indictment is secured in a grand jury with evidence inadmissible for a full trial, such as hearsay, the presumption is that prosecutors will secure appropriate, competent evidence before a full trial. If admissible evidence does not materialize, a prosecutor may simply drop the case or offer a plea deal. However, by this point in the judicial proceedings, the courts, defense council, and district attorney have all spent significant time and resources on the case. The proposed statutory change could help “weed out” weak cases before significant time and resources have been spent by the courts, district attorney offices, and defense council.

Though the grand jury is a constitutionally established institution, out of New Mexico’s 13 judicial court districts, only the 2nd (Bernalillo County) and 3rd (Doña Ana Country) judicial district courts use grand juries more than preliminary hearings to vet felony indictments, and even those settings are decreasing (see “Significant Issues” below). LFC analysis assumes some additional staff resources would be needed for district attorney offices of those two populous districts, and while much of that increased cost would be offset by savings at the Public Defender Department, not every grand jury target is indigent, and therefore the fiscal impact table reflects a minimal cost to district attorney offices.

SIGNIFICANT ISSUES

New Mexico Constitution and Supreme Court. Article II, Section 14, of the New Mexico Constitution establishes the grand jury, and rules around grand jury proceedings are promulgated by the New Mexico Supreme Court.

AOC and NMAG both cite *State v. Martinez*, 2018-NMSC-031, a case examining the validity of an indictment secured in a grand jury that was presented with unlawfully obtained subpoenas, to note the New Mexico Supreme court “has consistently honored a strong policy of resisting dismissal of otherwise valid grand jury indictments based on disputes about the source or trial admissibility of the evidence considered by the grand jury.” In *Martinez*, the Supreme Court

concluded:

Absent statutory authorization, a court may not overturn an otherwise lawful grand jury indictment because of trial inadmissibility or improprieties in the procurement of evidence that was considered by the grand jury.

HB226 as amended would provide this statutory authorization for the district court to review “the relevancy, competency, and lawfulness of the evidence that was presented to the grand jury,” allowing for such indictments to be dismissed.

AOC notes any change in statute regarding grand juries would result in rule changes from the Supreme Court. AOC adds the provision in HB266 as amended requiring the target notice to include the target’s right to inform the grand jury of “the existence of evidence that would disprove or reduce the charge or accusation or that would make an indictment unjustified” is already required by Supreme Court Rule 5-302A(f) and (B)(2).

Grand Juries versus Preliminary Hearings in New Mexico. In 2019, the 2nd Judicial District Court, in Bernalillo County, began gradually reducing the number of grand jury proceedings and replaced them with preliminary hearings. The shift sparked a debate among prosecutors, defense attorneys, and judges over the merits of each system. During grand jury proceedings, the prosecutor and arresting officer present facts of the case to a jury. The procedure is brief, closed to the public, lacks a judge or defense council, and while defendants may be present, they are unable to advocate for themselves. Prosecutors argue grand juries save time and resources for law enforcement officers, witnesses, and district attorney’s offices, in part because of the lower standard of admissible evidence, which HB226 seeks to amend.

Preliminary hearings are open to the public and resemble a trial, with defense council present and a judge determining if a case should result in an indictment. Public defenders argue the thorough vetting process of preliminary hearings often results in early resolutions to cases, saving time and resources for all justice partners. For the past six years, the frequency with which the 2nd Judicial District brought forth indictments through grand juries was unique both nationally and in New Mexico, holding up to three grand jury proceedings per week, compared with once per week in most judicial districts. Several New Mexico judicial districts do not use grand juries at all. A 2015 report issued by the National Center for State Courts recognized preliminary hearings as a national best practice and recommended Bernalillo County increase its use of preliminary hearings and decrease its reliance on grand juries.

Federal Law and Hearsay. Federal grand jury proceedings have long held hearsay as admissible, which appear to be largely disallowed in grand juries under the provisions of HB226 as amended. Though hearsay is inadmissible in full trial to prevent unsubstantiated claims or rumors from determining court outcomes, AODA notes hearsay could also include testimony from vulnerable or traumatized witnesses or victims, such as children or sexual assault survivors.

The House Consumer and Public Affairs Committee amendment seems to partially address this concern by providing that witnesses under 13 years of age shall not be required to testify in a grand jury proceeding, however, it does not clarify whether or not that witness testimony may still be submitted to the grand jury. It may be desirable to clarify if the legislative intent is to create an exception allowing hearsay in grand jury proceedings in these instances.

AODA speculates that, if more restrictions are placed on this type of testimony and vulnerable

parties are asked to provide full testimony multiple times, indictments for these types of cases could be more difficult to secure.

OTHER SUBSTANTIVE ISSUES

AOC notes that, although sufficient target notice is crucial to just grand jury proceedings, the bill's requirement to include "the essential facts of the charge or accusation" appears to mean that "any charges not referenced could not be filed, even if subsequent investigation reveals additional charges are warranted."

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