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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/9/2023

SPONSOR Chasey

BILL

SHORT TITLE Admission of Certain Grand Jury Evidence **NUMBER** House Bill 190

ANALYST Gray

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts	No fiscal impact	\$350.0	\$350.0	\$700.0	Recurring	General fund
County Detention Costs	No fiscal impact	at most \$30.0	at most \$30.0	at most \$60.0	Recurring	County general funds
Public Defenders/District Attorneys	No fiscal impact	Indeterminate but possibly substantial. See fiscal implications				General fund
Total	No fiscal impact	\$380.0	\$380.0	\$760.0	Recurring	

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

Administrative Office of the District Attorneys (AODA)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 190

House Bill 190 proposes to amend statute related to grand jury proceedings. The changes include:

- Allowing all relevant and competent evidence at grand jury proceedings as long as it comports with the rules of evidence for admissibility;
- Requiring additional notices to be provided to the target of a grand jury proceeding including a description of the facts of an alleged crime, and additional provisions regarding the existing right to request presentation of exculpatory evidence to the grand jury;
- Requiring the notification of the target of the right to alert the grand jury to evidence that

would disprove or reduce the charges; and

- Increasing timelines by the current statute and court rules; specifically, if the target is in custody the timeline for notification of the target is increased from four to seven days. If the target is out of custody the timeline is increased from ten to twenty days.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Increased court system costs. Analysis from the Administrative Office of the Courts (AOC) states that HB190 will likely lead to increased litigation in the short term. Requiring the rules of evidence in grand jury proceedings make it more likely for defendants to bring motions to dismiss. These increased dismissals will increase the number of hearings and costs in the courts. In FY22, there were about 2,000 indictments statewide based on preliminary data.

In the long term, the analysis concludes grand jury proceedings may be eliminated entirely. Prosecutors are likely to develop a preference for preliminary hearings, where there are significant exceptions to the rules of evidence. Preliminary hearings require a judge to preside over them, unlike grand jury proceedings where a judge is not present.

Taken together, these two changes will add additional cost burdens to courts. This analysis assumes that the equivalent of one judgeship will need to be created statewide, for a recurring cost of \$350 thousand.

Increased detention stay costs. HB190 contemplates increasing the notice period for detained targets from four to seven days. This extension would require detention centers to incur additional costs of housing in-custody targets for the additional three days.

It is difficult to estimate the number of individuals—and the associated costs—who will be impacted by this increased detention. Not all targets of grand jury trials are in detention, and detention depends on individual factors that are dissimilar between cases. To capture the full range of potential costs, this analysis assumes at least 5 percent and at most, 10 percent of grand jury indictments involve an individual currently detained. Nearly all grand juries result in indictment. Accordingly, this analysis assumes that at most 200 individuals statewide may be held for an additional three days for a total cost of \$30 thousand statewide.

The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand per year or \$150 per day; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year or \$72 per day across all facilities. LFC estimates a marginal cost (the cost per each additional inmate) of \$52 per county jail inmate per day, based on incarceration costs at the Metropolitan Detention Center.

Other increased system costs. Neither the Public Defender Department (PDD) nor the Administrative Office of the District Attorneys (AODA) provided estimates of the additional workload required under HB190. In the short-term, 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. Similar workload increases may be required from defense counsel and the Public Defender Department.

In the long-term, the change may result in overall system savings. 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 attorneys.

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.

AODA notes that the New Mexico Supreme Court has written that the grand jury is a pre-constitutional institution that, while given constitutional stature by the Fifth Amendment, is “not relegated by the Constitution to a position within any of the three branches of the government.” *Buzbee v. Donnelly*, 1981-NMSC-097.

However, statute governing grand juries has been substantively amended in the past, including amendments that added a requirement for a target to be notified in 1979 and 1981 and then again in 2003 when the Legislature added additional requirements to notification. PDD asserts that HB190’s changes “comport with the legislative history” and continue to preserve the target’s constitutional rights.

AOC notes that portions of HB190 conflict with existing court rules which provide that the rules of evidence do not apply to grand jury proceedings, provide different content requirements, and different deadlines than those proposed under the bill (see NMRA 5-302.2). AOC writes, “The proposals contained in HB190 may best be addressed as proposed amendments to NMRA 5-302.2.”

Other issues. AODA notes that HB190’s requirement to include essential facts of a charge when notifying a target is unnecessary because existing language meets a target’s due process rights. Further, analysis from the New Mexico Attorney General’s (NMAG) office notes that HB190 is not clear in what must be disclosed as essential facts in the target’s notification letter.

TECHNICAL ISSUES

Analysis from the NMAG’s office notes that section I(B) may conflict with Section I(C)(6) of HB190. Section I(B) notes that ‘*at least twenty-four hours before grand jury proceedings begin*’, the target’s counsel may alert the grand jury to the existence of evidence that would disprove or reduce a charge by notifying the prosecuting attorney who is assisting the grand jury. In Section I(C)(6), an obligation is placed upon prosecutors to notify an individual that they are a target of a grand jury investigation and they have the right to alert the grand jury to the existence of evidence that would disprove or reduce the charge by notifying the prosecuting attorney ‘*no later than forty-eight*’ hours before the grand jury session.

BG/al/ne