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FISCAL IMPACT REPORT

SPONSOR: Ingle DATE TYPED: 03/06/01 HB _____
 SHORT TITLE: Grand Jury Assistance SB 796/aSJC
 ANALYST: Belmares

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|---------|----------------------|---------------|
| FY01 | FY02 | FY01 | FY02 | | |
| | | | Minimal | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

- LFC Files
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General Office (AG)
- Public Defender Department

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment replaces the phrase “fair manner” with “fair and impartial” when describing how a prosecuting attorney shall conduct himself at all times when assisting the grand jury. This bill amendment address the issue previously raised by the Public Defender Department in response to Senate Bill 796 (see Significant Issues section below).

Synopsis of Original Bill

Senate Bill 796 adds new substantive provisions regarding assistance provided to grand juries. The changes includes allowing the Attorney General to assist grand juries when the Attorney General’s jurisdiction is involved, rather than requiring the Attorney General to assist when a district court so orders. When a grand jury is convened in response to a citizen’s grand jury petition pursuant to Article 2, Section 14 of the Constitution of New Mexico, the district attorney’s or his assistants’ assistance becomes mandatory. The bill removes the requirement that prosecutors act in a “fair and impartial manner” when presenting a case to a grand jury convened pursuant to citizens’ petitions. Under the bill, the prosecutor must only conduct himself in a “fair manner.” The bill would prohibit a grand jury from issuing a critical report of what has been investigated by the grand jury without also returning an indictment or an accusation for removal. Additionally, the bill states the grand jury

report shall not circumvent any person's rights to be properly charged, face his accusers and be heard in his own defense in open court.

Significant Issues

Before a person is forced to face formal charges and a trial by a petit jury, the grand jury is intended to insure the charges are not frivolous, but are based on solid information which satisfies the constitutional standard of "probable cause." The Public Defender Department asserts this bill exacerbates the problem of grand juries largely being controlled by the prosecution. If the prosecutor is permitted by law to act impartially, fairness demands that the target be permitted to attend the grand jury proceedings with the assistance of an attorney of his own. Otherwise, the playing field is heavily skewed in favor of one side, and the constitutional presumption of innocence is ignored.

The Administrative Office of the District Attorneys (AODA) has expressed concern regarding the restriction of a grand jury's ability to report on what it has discovered. The AODA asserts the discoveries of the grand jury may not show criminal activity, but negligence. This bill would prevent the grand jury from reporting this negligence.

The Attorney General Office has indicated the new statutory provision pertaining to grand jury reports is in accord with the spirit of *District Court v. McKenna*, 118 N.M. 402, 406, 881 P.2d 1387, 1391 (1994), in which the New Mexico Supreme Court held that a grand jury petition must seek a legitimate inquiry into alleged criminal conduct or malfeasance of a public office and not a "witch hunt."

FISCAL IMPLICATIONS

Senate Bill 796 makes no appropriation. Agencies responding to this bill have indicated the bill will have minimal or no fiscal impact. The Attorney General Office has suggested this bill would alleviate the resource strain placed on the agency due to current law allowing a district judge to order the Attorney General to attend and assist any grand jury. However, this alleviation was not quantified. Other agencies responding to this bill have indicated there would be minimal or no fiscal or administrative implications on their agencies.

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