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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/13

SPONSOR McSorley LAST UPDATED _____ HB _____

SHORT TITLE Criminal Procedure Preliminary Hearings SB 550

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 550 (SB 550) enacts a new section of Chapter 31, Criminal Procedure, establishing procedures for conducting a “preliminary inquiry” in a criminal case. SB 550 provides that in any case in which the prosecuting attorney wishes to have a public hearing of evidence, the prosecuting attorney shall request a preliminary inquiry of the chief judge of the judicial district in which the incident occurred. The chief judge shall assign a district court judge, a special master or a specially appointed pro tem judge to hear the case. The hearing is commenced by filing a complaint with a sworn statement; evidence shall be admitted in accordance with the rules of evidence; the court may issue subpoenas and request its own evidence, and the rules of evidence shall not apply to the court’s review. At the conclusion of the hearing, the judge shall prepare “a report containing findings of fact and conclusions of law, which shall be made public.” The report shall not charge any public officer or other person with willful misconduct, excessive force, corruption or malfeasance.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) has raised concerns that this legislation may lead to increased demands on district court judges but did not provide an estimated fiscal impact.

SIGNIFICANT ISSUES

The AOC has reported that:

The docket shift alone will have a ripple effect on the district courts. District attorney offices typically wait until just before a preliminary hearing is scheduled to inform the court that an indictment has been obtained and the preliminary hearing is unnecessary. This is most often because the district attorney has been pursuing the investigation of charges and presentation to a grand jury. The magistrate courts are able to absorb this kind of scheduling uncertainty by over-scheduling and then taking “walk-in” cases if the preliminary hearings do not actually happen. The district courts may not have this kind of flexibility. They will have to calendar all the hearings and either conduct them or cancel them as appropriate, but then leaving openings in their dockets that they would find more difficult to spontaneously fill. This would be wasted time that the district courts could otherwise devote to their current caseloads.

In addition, the bill’s directive that all preliminary hearings take place in district court is inconsistent with two sources of law. First, as stated above, the New Mexico constitution contemplates that preliminary hearings occur in magistrate court. NMSA 1978, section 34-3-2, echoes this constitutional duty by expressly extending the magistrates’ jurisdiction to preliminary hearings on felony matters. The Supreme Court, vested with the prime authority to regulate procedures in the courts, has likewise imposed very specific procedural requirements on the magistrate courts for the conduct of preliminary hearings pursuant to NMRA 6-202.

The Supreme Court, in executing its constitutional duty to supervise the courts, searches for consistency between legislative efforts to supervise court procedures and the Supreme Court’s own rules. Here, such a reconciliation would be challenging. Rule 6-202 is the Supreme Court’s sets out deadlines for the holding of preliminary examinations, the process for and limitations on adducing evidence, the threshold of proof for binding over for trial, and so on. The Supreme Court’s cases have consistently protected the constitutional rights of defendants at preliminary hearings. It is foreseeable, therefore, that the Supreme Court would prefer its own rule over the content of the bill.

Finally, the bill would prohibit any court to make a finding, presumably of probable cause, that a defendant has engaged in willful misconduct, excessive force, corruption or malfeasance. This effectively requires all such charges to be heard by a grand jury. The constitution allows a felony charge to be commenced either way. The bill’s limitation of the authority to commence criminal charges by information and preliminary hearing on these types of cases may arguably be inconsistent with the New Mexico bill of rights.

OTHER SUBSTANTIVE ISSUES

The Attorney General’s Office (AGO) has noted the following:

The bill is unclear in that it does not clearly spell out what could be the ultimate outcomes of a preliminary hearing. The bill does not appear to vest a judge with the jurisdiction to bind a matter over for felony prosecution. The bill is similarly unclear regarding what rights a target/defendant would have before, during, and after a public preliminary hearing.

Additionally, the language in Section E which would bar a judge from issuing a report charging “any public officer or other person with willful misconduct, excessive force, corruption or malfeasance” is troubling. Given that the apparent goal of this bill is to provide a public hearing of evidence, it seems incongruous with that goal to limit outcomes regarding public officials.

NCJ/svb