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FISCAL IMPACT REPORT

SPONSOR Pacheco ORIGINAL DATE 2/22/15
LAST UPDATED _____ HB 483
SHORT TITLE Release on Own Recognizance for Some Crimes SB _____
ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Narrative					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Public Defender Department (PDD)
Bernalillo County Metropolitan Court (BCMC)
Administrative Office of the District Attorneys (AODA)
New Mexico Sentencing Commission (NMSC)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 483 proposes to amend Section 31-3-1 NMSA 1978 to provide that release on personal recognizance would not be available from the detention center to persons charged with Aggravated Battery against a Household Member or Aggravated Driving while Intoxicated.

The effective date of the proposed legislation is July 1, 2015.

FISCAL IMPLICATIONS

The PDD reports that it would see a minimal workload increase because its lawyers would have to appear to secure the release of a greater number of its clients. It should however be able to absorb the increase so long as the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

SIGNIFICANT ISSUES

NMSC reports that the American Bar Association (ABA) has set forth standards for pretrial release. The ABA has asserted that it should be presumed that defendants are entitled to release on personal recognizance on condition that they attend all required court proceedings and that they do not commit a further criminal offense. This presumption may be rebutted by evidence that there is a substantial risk of nonappearance or need for additional conditions.

PDD and BCMC cites *State v. Brown*, 2014-NMSC-038, 338 P.3D 1276, in which the New Mexico Supreme Court recently reiterated the importance of the New Mexico Constitution's guarantee that "all persons . . . before conviction" are entitled to be released from custody pending trial. Noting the message of *Brown*, SB 557 might make more difficult meeting this constitutional guarantee.

AOC indicates that HB 483 proposes to limit a court's authority to allow a person accused of the two listed crimes from pretrial release to a responsible person designated by the court, an authority explicitly recognized in the court rules. This conflict may bring into question the constitutionality of the proposed limitation on a trial court's authority to set conditions that meet the constitutional requirement to provide pretrial release under the least restrictive conditions necessary to ensure the defendant's return to court and absence of threat to public safety. This bill analysis lacks the scope to fully explore the issue, but the constitutionality of the bill should be given careful attention.

BCMC states pursuant to Rule 7-401(J) NMRA, adopted by the Supreme Court of New Mexico, persons charged may be released from custody by a designee, a "responsible person designated in writing by the chief judge of the metropolitan court." Designees have been used by the Bernalillo County Metropolitan Court for approximately thirty-six years to promote economy for the State of New Mexico and Bernalillo County. The designee is based at the Metropolitan Courthouse, not at the Bernalillo County Metropolitan Detention Center, and is an employee of the Court.

The AGO opines that HB 483 would limit the discretion of a judge to determine appropriate conditions of a defendant's release pending trial. This amendment would require additional amendment to Rule 5-401 relating to bail.

According to NMSC, only South Dakota has restricted release on personal recognizance.

PERFORMANCE IMPLICATIONS

HB 483 might have an impact on measures in the courts such as cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

HB 483 might cause the Metropolitan Court to be far less efficient in the process of reviewing conditions of release for defendants charged with aggravated battery on a household member or aggravated DWI. If the Court's designee for the Bernalillo County Metropolitan Detention Center can no longer review for release on recognizance defendants charged with these two particular crimes, pursuant to the New Mexico Constitution and the Rules of Criminal Procedure,

those defendants will either have to pay a bond or will have to remain in custody and be seen by a Judge at a court hearing.

OTHER SUBSTANTIVE ISSUES

According to AOC, under the Constitution, the legislature lacks the power to prescribe by statute rules of practice and procedure, although it has in the past attempted to do so. Certainly statutes purporting to regulate practice and procedure in the courts cannot be made binding, for the constitutional power is vested exclusively in this court. ... [A]ny legislative measure which affects pleading, practice or procedure in relation to a power expressly vested by the Constitution in the judiciary, such as quo warranto, cannot be deemed binding. (State ex rel. Anaya v. McBride, 88 N.M. 244, 247, 539 P.2d 1006 (1975).)

PDD refers to *State v. Valles*, 2004-NMCA-118, 140 N.M. 458, which makes clear that bail bond statutes address substantive, not procedural, rights, and thus do not present separation of powers questions as presented in *Ammerman v. Hubbard Broad., Inc.*, 1976-NMSC-031, 89 N.M. 307.

ABS/aml