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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/27/15

SPONSOR Stewart LAST UPDATED \_\_\_\_\_ HB 545

SHORT TITLE Limit Pretrial Detention for Some Crimes SB \_\_\_\_\_

ANALYST Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 538.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 545 creates a new section of law limiting the time period for the pretrial detention of certain arrestees to 48 hours. The time limit applies to specific crimes listed in the bill the maximum sentence on which is 90 days or less. The list generally includes nonviolent and traffic offenses as well as “crimes or violations substantially similar” to the crimes listed. A judge may keep the arrestee in custody if, the arrestee has more than one pending warrant for failure to appear, a warrant in another case or has other, more serious charges.

### FISCAL IMPLICATIONS

PDD stated that while the extent of the effect state-wide is difficult to predict, the PDD might see a reduction caseloads in the Metropolitan and magistrate courts were this bill to become law. Certainly, the citizens of New Mexico would see a reduction in what they presently pay for excessive pretrial incarceration of alleged petty criminals. Many of these offenses would begin to resolve themselves at arraignment, instead of at the trial setting which might be six weeks away from the date of the offense. If this were to be an incidental effect, it would reduce caseloads and would enable PDD to better meet its constitutional mandate to provide indigent criminal defense with fewer requests for increased resources.

## SIGNIFICANT ISSUES

PDD provided the following:

In *State v. Brown*, the New Mexico Supreme Court reiterated the importance of the New Mexico Constitution's guarantee that "all persons . . . before conviction" are entitled to be released from custody pending trial. In keeping with the message of *Brown*, the bill addresses deficiencies in meeting this constitutional guarantee.

The aim of this bill is to ameliorate excessive pretrial incarceration for petty crimes that are sometimes alleged to be unequally enforced against the homeless population. Because this segment of the population suffers from both political and monetary powerlessness, many charged with such a crime are usually unable to post bail set, even if the amount would be considered nominal to most.

With one full misdemeanor exception for the offense of "Criminal Trespass," the bill largely addresses pretrial incarceration for petty misdemeanors, defined as a category of minor crimes that carry a maximum penalty of either 6 months or 90 days. None of the offenses encompassed in this legislation would under any interpretation be considered "serious": these crimes are often coined "Quality of Life Crimes," with shoplifting arguably being the most serious of those enumerated. Even though the offenses cited are relatively minor, they are often committed by repeat offenders who might have a history of failing to appear in court. The bill addresses this issue by excluding people with warrants for the same case or a number of outstanding warrants in other cases. Also, the bill exempts those who have also been cited with full misdemeanors or felonies arising from the same incident.

Reviewer notes that a member of the homeless population charged with one of the crimes this bill addresses will typically be incarcerated on a small bond until their trial date, at which point s/he have often served a notably significant sentence (typically ranging in from four to six weeks the Albuquerque Metro Area) for a very minor "quality of life" offense. Examples of such would include: stealing socks, going to a Circle K where a person has been previously banned for stealing soda or panhandling, jaywalking, or even merely walking on the wrong side of the sidewalk. This bill would have the effect of limiting the period such a person might spend incarcerated awaiting trial for one of these offenses, while at the same time leaving the ultimate discretion in the hands of the attorneys who might negotiate a fitting resolution for the matter, and with the judge who can craft a sentence that fits the crime- which the present structure of pretrial incarceration usually grossly exceeds.

The AOC provided the following:

The Supreme Court has allowed judges well-defined discretion under Rules 6-401 (magistrate courts) and 7-401 (Metropolitan Court) to address pre-trial release. If a defendant is charged with one of the offenses listed in the bill, then a judge must consider the nature of that charge as part of the analysis on how to set bond. Because the bill would appear to encroach onto that broad discretion, then arguably the bill would run afoul of the Supreme Court's absolute authority over criminal practice and procedure in the courts.

This bill would clearly increase the number of arrestees released from detention facilities statewide. That would save the detention centers, and thus the counties, money for housing arrestees for longer than necessary. In fact, New Mexico magistrate courts release arrestees on their own recognizance or on an unsecured bond about 35% of the time, whereas the national average is about 75% of the time. If it is the policy of New Mexico that more people should be released earlier when charged with nonviolent offenses, this bill would address that policy.

The AODA stated that the only included offense that gives pause if offender release is guaranteed after 48 hours would be criminal trespass, as that is frequently a fact situation found in domestic violence scenarios. Criminal trespass is often immediately charged while further investigation is being completed on more serious crimes, to give a handle on the offender. Allowing release in a situation where it would not occur otherwise could give the offender an opportunity to re-offend or to take off, thus complicating the prosecution process and endangering the victim.

EC/aml/bb