F I S C A L I M P A C T R E P O R T

SPONSOR McSorley **ORIGINAL DATE** 3/11/15 **LAST UPDATED** 3/12/15 **HB**

SHORT TITLE Perliminary Hearing Procedures **SB** 569

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Defender Department (PDD)

No Responses Received From
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 569 proposes to add a new section to Chapeter 31 in which a prosecuting attorney wishing to have a public hearing of evidence can do so after requesting a preliminary inquiry of the judicial district court chief judge. The bill also provides guidance to the courts on how the hearings should be conducted.

The bill goes on to specify that the person to hear this evidence is a district judge, special master or judge pro tempore. There are specifications for criminal complaints and a requirement that the rules of evidence be followed in the proceeding, though the judge presiding over the hearing need not follow the rules of evidence.

The bill also provides specifications for the judge's order on the hearing. The judge must make findings and conclusions, may not include findings related to law enforcement misconduct, and may not circumvent the accused person's rights of confrontation and open court.

SIGNIFICANT ISSUES

Previously AOC stated that the New Mexico constitution, article VI, section 3, states that the Supreme Court "shall have a superintending control over all inferior courts…." The Supreme Court has long held that superintending control means sole authority over practice and procedure in criminal and civil court. *State v. Roy*, 40 N.M. 397 (1936). This includes criminal pretrial procedures. *State v. Ogden*, 118 N.M. 234 (1994). Respectfully, what that means is that the Legislature does not have the authority to regulate practice and procedure. *State ex rel. Anaya v. McBride*, 88 N.M. 244 (1975).

Furthermore, article II, section 14, states, "No person shall be so held on information without having had a preliminary examination before an examining magistrate…."

AOC also states that the Supreme Court, through a public rulemaking process, has promulgated Rule 6-202 for magistrate court preliminary examinations and Rule 7-202 for the Metropolitan Court. These rules roughly parallel one another. They both provide exacting specifications for preliminary examinations in the absence of a grand jury indictment. If either the magistrate court or the Metropolitan Court finds probable cause on a charge not within their jurisdiction, the courts must bind the matter over to the district court for full proceedings. The procedure the Supreme Court consciously and expressly adopted was for the courts of limited jurisdiction to have first review of unindicted charges. On some dockets, there could be up to 30-40 preliminary hearings scheduled for a judge in one afternoon. While many, if not most, of those hearings are canceled due to indictments, plea agreements or hearing waivers, it would be burdensome to require findings of fact for each case that was heard. Thus, the Supreme Court has determined that the judges do not have to submit findings.

According to AOC, SB 569 directing that only the district courts may conduct preliminary examinations and must make findings, is directly contrary to the constitutional right to be heard before a magistrate and to the Supreme Court's supervision of its own inferior courts.

ADMINISTRATIVE IMPLICATIONS

AOC points out that moving dozens of preliminary hearings from the courts of limited jurisdiction to the courts of general jurisdiction is a substantial shift in responsibility with a consequential substantial shift in workloads. This is a considerable shift in the status quo which the courts will have to accommodate.

OTHER SUBSTANTIVE ISSUES

AOC states that it may be thought to be incongruous that the prosecutor must follow the rules of evidence in presenting a preliminary hearing case, but the judge may consider any evidence regardless of whether it is admissible under the rules of evidence.

ABS/bb/je