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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/2018

SPONSOR Martinez LAST UPDATED _____ HB _____

SHORT TITLE Supreme Court Rescind Some Bail Rules SJM 13

ANALYST Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HJR5 and SB44.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)

Responses Not Received From

Public Defender Department

SUMMARY

Synopsis of Bill

SJM 13 would create an official request by the Legislature of the State of New Mexico that the New Mexico Supreme Court Rescind Rules of Criminal Procedure numbers 5-106, 5-204, 5-401, 5-402, 5-403, 5-405, 5-406, 6-401, 6-403, 6-406, 6-506, 6-703, 7-401, 7-403, 7-406, 7-506, 7-703, 8-401, 8-403, 8-406, 8-506, and 8-703. SJM 13 also references Section 38-1-1 NMSA 1978, wherein when the Supreme Court promulgates rules for judicial proceedings, “Such rules shall not abridge, enlarge or modify the substantive rights of any litigant.”

SJM13 states that the Supreme Court’s rules fail to provide that a defendant who is neither a danger nor a flight risk and who has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond.

FISCAL IMPLICATIONS

SJM 13 requests that the Supreme Court rescind certain rules of criminal procedures, without requiring specific changes. Since the request is non-binding, determining the fiscal impact is dependent on whether the Court adopts the request to rescind the stated rules. If the Court adopts none of the requested changes, no cost will be incurred.

The AODA and NMAG both reported no fiscal impact as a result of SJM 13.

Yet, considerable fiscal impacts could result if the request is adopted by the Court. The AOC states that “if the New Mexico Supreme Court were to adopt this recommendation and rescind these Rules, it would have a significant fiscal impact on the courts. These Rules regulate various aspects of criminal procedure in the courts, and not just those dealing with bond and pretrial release. For example, Rule 5-106 governs the procedures for exercising peremptory challenges to a district court judge, recusal procedures, and procedures for reassigning judges who have been excused or recused. Rule 5-204 governs the procedures for the amendment or dismissal of a criminal complaint, information, or indictment in the district courts. Rules 6-506, 7-506, and 8-506 set the time limits for the commencement of trials and arraignments in the magistrate, metropolitan, and municipal courts, and the procedures for extending those time limits. Rules 6-703, 7-703, and 8-703 govern the procedures for appeals from the magistrate, metropolitan, and municipal courts.”

Furthermore, the AOC contends that “without these Rules, the courts would be left without any direction on how to process these aspects of criminal cases, which would lead to significant administrative frustration and inefficiency. It would create a significant backlog in case processing, and would leave the Administrative Office of the Courts without any benchmarks from which to assess issues regarding any of these aspects of case processing. Even if SJM 13 called for just the rescission of the bail rules, it would still have a significant fiscal impact on the courts because the setting of conditions of release; review of those conditions; and receipting, refunding, and revocation of bail is a significant aspect of criminal case processing. Without clear rules of procedure for pretrial release, the same case processing issues will result in significant fiscal impacts on the courts which are not able to be quantified at this time.”

Additionally, should the requests to rescind the Rules be adopted by the Court, it would require significant efforts on the Court’s rule making process to rescind and promulgate replacement rules. The Court develops rules through an intensive committee process which would be convened for extensive overhaul of the rules in question. This process takes a significant amount of time. Even after the Rules Committee makes recommendations on the proposed Rules, those recommendations are published for comment. The comments are then received and discussed by the Rules Committee, which then sends final recommendations to the Supreme Court to make a decision on the Rules to be adopted. Typically the Court adopts rule changes to begin on the first of the calendar year. The meeting space, conferencing resources, time away from regular duties of judicial employees, publishing costs, and other costs is reported to have a fiscal impact on the courts, which AOC was unable to quantify at this time.

SIGNIFICANT ISSUES

In 2016, New Mexico amended Art. II, Section 13 of its constitution, the provision governing pretrial detention. In 2017, to implement the new constitutional provisions, the Supreme Court

adopted new rules governing pretrial detention.

The AODA adds that “as currently written SJM13 asks the Supreme Court to repeal all its pretrial release rules on the assumption that they do not provide for a hearing. However, the rules do provide that a defendant may request a hearing to seek relief from the requirement that he or she post a money or property bond. And the rules direct the court to consider the defendant’s financial ability. If the drafters of SJM13 have issues with the hearing provision, they should raise those specific issues.”

The AOC seconded the point made by the AODA stating that “SJM 13 references the 2016 amendment to Article 2, Section 13 of the New Mexico Constitution and claims that “the [S]upreme [C]ourt’s rules do not include the constitutional requirement to file a motion to request relief from the requirement to post bond.” However, SJM 13 asks the court to rescind more than just the Rules on bond. Therefore, SJM 13 is not narrowly tailored to meet the apparent purpose for which it was drafted.”

The NMAG concurred, positing that “the stated reason for the memorial is that the new rules do not include the new constitutional requirement that a defendant who is neither a danger nor a flight risk and who has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond. The memorial states that this is a violation of Section 38-1-1 which provides that Supreme Court rules “shall not abridge, enlarge or modify the substantive rights of any litigant.” The memorial does not specify which of the rules abridge, enlarge, or modify this constitutional right and indicates that the right is just not addressed in the rules.”

Finally, AOC adds that “the claim that the Rules do not include a requirement to file a motion to request relief from the requirement to post bond, is inaccurate. Rules 401(H) contain this requirement for each respective rule set.”

PERFORMANCE IMPLICATIONS

None reported by the agencies other than those identified in the fiscal impact section.

ADMINISTRATIVE IMPLICATIONS

None reported by the agencies other than those identified in the fiscal impact section.

OTHER SUBSTANTIVE ISSUES

If the Supreme Court rules do not adequately reflect the requirements of Article 2, Section 13, the issue may be resolved in litigation, where a specific set of facts will be examined in light of the constitutional requirements. There is nothing in the Supreme Court’s rules to prevent a defendant from filing a motion under the constitutional provision, if for some reason the Supreme Court’s rules do not address the defendant’s particular situation.

The NMAG states that an alternative may be to “request the Supreme Court Ad Hoc Pretrial Release Committee to address the issue and/or ask the Supreme Court” to review the Rules.

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