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FISCAL IMPACT REPORT

SPONSOR Bandy ORIGINAL DATE 1/30/2019
LAST UPDATED _____ HB 224
SHORT TITLE Courts of Record for Felony Bail Cases SB _____
ANALYST Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	>\$465.3	>\$467.5	>\$932.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 279.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 224 would amend Sections 34-8A-6 and 35-3-4, NMSA 1978, to provide that the Metropolitan court and the magistrate courts would be courts of record for criminal actions involving a felony for which the prosecuting authority has requested a hearing to deny bail. The bill would also provide exceptions for the trial de novo appeal to the district court for review of the Metropolitan or magistrate court's decision on a motion to deny bail.

FISCAL IMPLICATIONS

Depending on amendments to Rules of Criminal Procedure 5-409, 6-409, and 7-409 NMRA, which currently require motions for pretrial detention to be heard in the district court, and the number of such motions filed by the prosecuting authority, this bill has the potential to shift work from the district court to the Metropolitan and magistrate courts, regarding the responsibility to conduct the initial hearing to deny bail. This would not impact court budgets outside of the

Second Judicial District, as it would not require additional resources, but rather a shifting of existing resources. Beginning in FY20, the magistrate courts will be consolidated under the budgetary authority of the district courts within each judicial district. Therefore, the district courts will be able to reallocate resources to the magistrate courts to accommodate this shift in responsibilities.

According to the Administrative Office of the Courts (AOC), if the Metropolitan Court were made a court of record for hearing pretrial detention motions, it would require the Metropolitan Court to dedicate additional staff for hearing these motions, which based on FY19 compensation levels, represent a cost to the Court as follows: one (1.0) FTE Judge (\$158,518 for salary and benefits), one (1.0) FTE Trial Court Administrative Assistant (“TCAA”) (\$71,471 for salary and benefits), and three (3.0) FTE judicial specialists 2 (\$158,099 for salary and benefits) for hearing these Motions. This is based on calendar years 2017 and 2018, where 593 and 1,352 motions for pretrial detention were filed, respectively. This averages to roughly 26 motions for pretrial detention being filed each week. With the hearing on each motion taking approximately 45 minutes (but with some hearings taking much longer and up to one day), this represents anywhere from twenty (20) to forty (40) or more hours each week that would be dedicated for these motions.

Additionally, the Metropolitan Court employs probation officers who provide pretrial supervision of felony defendants during the roughly 60 day period of time until a preliminary hearing is held in the Metropolitan Court. Currently, for cases are transferred to the district court when pretrial detention motions are filed, so that the district court can address the motion and supervise those defendants when the motion is denied. According to the AOC, if motions are heard by the Metropolitan Court, the court would incur the cost of at least one FTE additional probation officer (\$64,190) for the supervision of defendants whose motions have been denied.

This bill would have an additional fiscal impact on district courts because it would create an additional level of appeal which currently does not.

The Public Defender Department (PDD) notes that HB 224 would cause the department to send Albuquerque felony attorneys to metropolitan courts in which they do not typically practice, and where they would not otherwise be. PDD argues that this would be necessary because the attorneys who presently practice in metropolitan court are less experienced in general, and their training is more focused on misdemeanor defense. Should PDD dispatch felony attorneys to courts where they do not ordinarily practice for additional duties is likely to create additional workload and is likely to necessitate the hiring of additional, experienced, felony-level attorneys. Attorneys in other districts outside Albuquerque are more likely to regularly practice in magistrate courts, but their travel between courts is likely to increase.

Finally, the Administrative Office of the District Attorneys (AODA) finds that HB 224 could result in a reduction in the number of hearings on release, and costs to the district attorneys could be reduced. AODA also acknowledges that the changes would require additional work by prosecutors at an earlier stage in the proceedings, which may counterbalance those savings.

SIGNIFICANT ISSUES

NMAG notes the following significant issues:

Sections 1 and 2. While the title of the bill is clear, the amendments are not, and the bill appears to confer jurisdiction in felony cases. The new language fails to distinguish between pretrial detention hearings and the entire felony action, and appears to turn the lower courts into courts of record for the *entire criminal action*, not just the bail hearing. *See, e.g.*, page 2, lines 8 and 17. On page 4, lines 10-12, this confusion is even more obvious where the new language makes magistrate court “a court of record for criminal actions involving a felony” when the prosecutor requests pretrial detention.

Section 3. Two issues: First, the bill eliminates de novo appeals to district courts without providing for a different standard of review, and without indicating the proper court to which an appeal may be taken. Second, the elimination of the de novo appeal only applies to “a decision to deny bail,” and is silent with respect to a decision to release the defendant. This may provide two different standards, and courts, for appeals depending on the magistrate’s decision.

AOC points to the following issues:

It should be noted that the language in the Bill could be interpreted as giving these courts trial jurisdiction over felony charges, where “the prosecuting authority has requested a hearing to deny bail.” As the Bill would amend the jurisdictional statutes for these courts, and it only says that the courts would be courts of record for cases where the prosecuting authority has requested a hearing to deny bail, this could be construed as meaning that the courts are given jurisdiction over the entire case when such a hearing has been requested. Alternative language stating that these courts are courts of record “for the purposes of conducting a hearing to deny bail for a defendant charged with a felony, upon the request of the prosecuting authority,” would help to alleviate this confusion. It may also be helpful to specify that this authority only exists until the pending charges have been filed in the district court. This would eliminate any procedural confusion about where the prosecuting authority could request the hearing after an indictment or criminal information had been filed in the district court, and clarify that the district court would retain trial jurisdiction over these charges.

It should also be noted that there could be constitutional challenges to this law, based on the language of Article II Section 13 of the New Mexico Constitution, “Bail may be denied by a *court of record pending trial for a defendant charged with a felony* if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community” (emphasis added). There is an argument that that provision requires the court where the case is pending trial to conduct the pretrial detention hearing. Since the Metropolitan and Magistrate Courts do not have trial jurisdiction over felony offenses (as discussed above), this argument would posit that they are not constitutionally authorized to conduct these hearings. Whether the constitutional provision would limit this requirement in such a way, would ultimately be up to the New Mexico Court of Appeals or Supreme Court. However, if this issue is raised and appealed, then it would cause significant litigation in the courts, which would cause a fiscal impact and administrative burden, which the courts are incapable of quantifying at this time.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This Bill relates to HB 279, which provides for appeals of on the record cases in the Metropolitan court to go directly to the Court of Appeals. HB 279 would provide for direct appeal to the Court of Appeals for on the record civil cases and cases of DWI and domestic violence in the Metropolitan court. If these pretrial detention hearings are to become on the record hearings in the Metropolitan court, then the legislature may want to provide for appeals of those decisions to go directly to the Court of Appeals, as well.

TECHNICAL ISSUES

More precise language is required to isolate the pretrial detention hearing from the entire criminal action. *See* Significant Issues above.

NMAG notes that in section 2 (C) the “new language should be moved to its own subsection. Currently, it is placed between two sentences that should be contiguous.”

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