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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/09

SPONSOR     Kintigh     LAST UPDATED                      HB     857    

SHORT TITLE     Appeals From Magistrate to District Court     SB                     

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ANALYST     C. Sanchez    

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorney (AODA)  
 Public Defender (PD)

### SUMMARY

#### Synopsis of Bill

House Bill 857 enacts a new section of Chapter 35, Article 13 NMSA 1978, governing appeals from magistrate court, to permit an appeal to be taken to the district court, in any criminal proceeding in magistrate court, from a decision or order of the magistrate court suppressing or excluding evidence or requiring the return of seized property. The attorney must certify to the district court that the appeal is not taken for purpose of delay and that the evidence constitutes substantial proof of a fact that is material in the proceeding. The bill provides that in such an appeal, the district court is required to hold an evidentiary hearing of the facts related to the issue on appeal. HB 857 prohibits an appeal by the state when the double jeopardy clause of the U.S. Constitution or the NM Constitution prohibits further prosecution.

The effective date of the Act is July 1, 2009.

### FISCAL IMPLICATIONS

According to the AOC, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the

judiciary would be proportional to the enforcement of this law and appeals to the district court. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

Section 35-13-1 NMSA 1978 permits a defendant aggrieved by any judgment rendered or final order issued by the magistrate court in a criminal action to appeal to the district court within specified time periods. HB 857 permits both the prosecution and the defendant in a criminal proceeding in magistrate court to appeal, and the appeal is not from a judgment or final order but rather from a decision or order of the magistrate court suppressing or excluding evidence or requiring the return of seized property.

There may be State constitutional problems with this bill. The Supreme Court has held that there is no constitutional or statutory basis for an appeal by the State from a suppression order of a magistrate court. This bill would remove the statutory impediment. Whether passage of the statute would affect the Supreme Court's analysis of the constitution is unknown.

According to the Public Defender, appears to be an attempt to get around the holding of *State v. Rayburns*, 2008-NMCA-050, 143 N.M. 803, 182 P.3d 786. The proposed legislation would likely be struck down on appeal for violating the separation of powers mandated in the constitution.

The Public Defender states the following:

“*Rayburns* applied the New Mexico Supreme Court's ruling in *State v. Heinsen*, 2005-NMSC-035, 138 N.M. 441, 121 P.3d 1040, to determine whether a prosecutor could avoid the Supreme Court's time limits for prosecuting a case by dodging into district court after a magistrate judge excluded prosecution evidence in magistrate court due to the prosecutor's refusal to provide the required discovery on that evidence. 2008-NMCA-050, 3-4. The prosecutor tried to move the case into district court in order to get the time limits under Rule 5-604 NMRA to start up again from scratch, but the district judge held a hearing, looked at what was going on, and found that the prosecutor did not have a proper basis to extend the time limits. *Id.* at 4-5. The district judge then found that the prosecutor had not finished the case within the time limits, and granted the defense motion to dismiss. *Id.* at 5.

In *Rayburns*, the Court of Appeals looked at what had happened and found that, “allowing the State a new six-month period after a sanction for the State's discovery violations would create a situation susceptible to manipulation by the State and would result in the encouragement of continued discovery violations and disregard for other rules of criminal procedure. We do not believe that the State should be permitted to benefit from its failure to follow the requirements of discovery or rules of criminal procedure.” 2008-NMCA-050, 22. The New Mexico Supreme Court initially granted review of the Court of Appeals' *Rayburns* opinion, but then quashed the review, leaving the Court of Appeals' decision as the published law of New Mexico. 2008-NMCERT-004, 144 N.M. 49, 183 P.3d 934; writ quashed May 13, 2008; State's motion for rehearing denied on Jun. 9, 2008.

What the *Rayburns* decision means is that the prosecution has to comply with discovery procedures in the magistrate court. If not, a magistrate judge has the power to suppress the

evidence that was not disclosed to a defendant, and the errant prosecutor cannot dodge such sanctions with impunity because the district judge will *review* any re-filings by the prosecutor. This is a most infrequent situation: prosecutors are *rarely* sanctioned for discovery violations because most prosecutors are scrupulous in following their constitutional discovery obligations.

The problem with the proposed legislation is that it removes from the district court the ability to review the actual purpose of the prosecutor in appealing to the district court: it relies instead solely on the prosecutor's self-certification. This removes from the court its well-established power to control its own docket and impinges on the rule-making authority of the New Mexico Supreme Court. *See Albuquerque Rape Crisis Center v. Blackmer*, 2005-NMSC-032, 138 N.M. 398, 120 P.3d 820.

The New Mexico Supreme Court has held that statutes purporting to regulate practice and procedure are not binding because the courts have the exclusive constitutional power to regulate practice and procedure under the constitutional separation of powers doctrine. *See Ammerman v. Hubbard Broad., Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976). Because it conflicts with a procedural rule already in place, this legislation, if enacted, would be subject to a separation-of-powers challenge and the New Mexico Supreme Court would likely decide that it was unconstitutional. *See* N.M. Const., Art. III, § 1."

## **TECHNICAL ISSUES**

The Bill provides in the title that it applies to "DWI CASES." However, the language of the Bill seems to apply to any criminal proceedings, which would include DWI cases and other types of cases.

## **OTHER SUBSTANTIVE ISSUES**

According to the AOC, HB 857 Section 1 title reads "Appeals from Magistrate Court in DWI Cases," but the section itself does not refer to DWI cases and instead refers to an appeal being taken from "any criminal proceeding in magistrate court." AOC suggests the section title be changed to read "Interlocutory Appeals from Magistrate Court in Criminal Cases."

According to the AODA, the Bill seems to track the appellate review procedure which governs the prosecution's right to appeal to the court of appeals from a district court's order suppressing or excluding evidence. However, the Bill is more expansive because it affords the defendant the right to appeal to the district court from an order suppressing or excluding evidence at trial. This may result in an unnecessary drain on the resources of the district courts because the defendant would have the ability to raise issues on appeal prior to trial. It may serve the interests of judicial economy for the defendant to raise such issues in his de novo appeal if convicted at trial.

According to the AODA, currently the prosecutor has no ability to seek appellate review of decisions by a magistrate judge in suppressing or excluding evidence. The prosecutor is required to either proceed to trial without relying on the excluded or suppressed evidence or dismiss criminal charges in magistrate court and re-file the charges in district court. Of course, if the prosecutor proceeds to trial without the excluded or suppressed evidence and the trial results in an acquittal, the prosecutor is precluded from appellate review under the double jeopardy prohibition. The appellate courts have held that it is valid for a prosecutor to dismiss charges and re-file in district court if the magistrate judge suppresses or excludes evidence, assuming it was

not used to gain a tactical advantage or avoid the six month rule applicable to prosecutions in magistrate court. Such a review is cumbersome because it requires a district court to examine the motives of the prosecutor in dismissing charges.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/svb