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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/13
 LAST UPDATED 03/08/13 HB 568/aHCPAC

SPONSOR Maestas

SHORT TITLE Violent Felony Preliminary Hearings SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$1,065.0	\$987.5	\$2,052.5*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General's Office (AGO)
- Public Defender Department (PDD)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 568 would strike the requirement that a preliminary hearing be held in a district court so that the hearing could be held in a district, metropolitan, or magistrate court. None of the responding agencies significantly changed their analysis as a result of the amendment.

Synopsis of Original Bill

House Bill 568 (HB 568) enacts a new section within Chapter 31 NMSA 1978, governing criminal procedure, to require a preliminary hearing in district court in which the prosecuting attorney shall present evidence, if the state believes there may be probable cause to charge a person with a violent felony.

The effective date of the Act is July 1, 2013.

FISCAL IMPLICATIONS

All of the responding agencies stated that HB 568 would have a potentially significant impact on their operating budget but the PDD was the only agency to quantify the possible cost of enactment of HB 568.

Preliminary hearings take a great deal of time, and the PDD Admin estimates that additional FTEs would be required to afford constitutionally mandated effective assistance of counsel in all violent felonies charged in the state. A conservative estimate is that eleven new PD3 (operating attorney) positions would be required around the state, as well as five new staffers (3 secretaries and 2 paralegals) to support them. PD3s carry start-up costs of \$77 thousand and recurring costs of \$72 thousand; new secretaries cost \$42 thousand to start and \$37.5 thousand recurring; paralegals cost \$46 thousand to start and \$41.5 thousand recurring. Start up costs involve desks, computers and office equipment. Recurring costs are salaries and benefits.

The AODA reports that there would be a large fiscal impact on the DA offices because of the requirement to present violent felony cases for which there “may be probable cause” that would otherwise be screened out and the requirement to present those cases in preliminary hearings before a district judge.

Similarly, the AOC has stated that preliminary hearings for the most part are held in the magistrate courts. To require that all preliminary hearings in which the state believes there may be probable cause to charge a person with a violent felony be held in district court would place a burden upon the district courts and judiciary, staff-wise, facility-wise and time-wise.

SIGNIFICANT ISSUES

Article II, Section 14 of the New Mexico Constitution provides, in part

Indictment and Information; Grand Juries; Rights of Accused

No person shall be held to answer for a capital, felonious or infamous crime unless on a presentment or indictment of a grand jury or information filed by a district attorney or attorney general or their deputies, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be so held on information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination.

There is a question whether HB 568, in requiring that preliminary hearings be held before the district court in the specified circumstance, rather than before a grand jury, where applicable, runs afoul of Article II, Section 14 of the New Mexico Constitution. Currently this is in the discretion of the district attorney.

The bill contains no exceptions for cases in which the testimony of a child victim of a violent offense would be necessary. The bill does not define violent offenses. The bill does not provide anything in the way of procedural rules. The bill does not indicate what remedies a judge would have with regard to binding matters over. The bill does not indicate whether evidentiary rules would apply. The bill does not indicate what rights a target would have before, during, and after a preliminary hearing.