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FISCAL IMPACT REPORT

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| SPONSOR <u>SHPAC</u> | LAST UPDATED <u>2/17/2023</u> |
| | ORIGINAL DATE <u>2/3/2023</u> |
| SHORT TITLE <u>Pretrial Release Hearing Standards</u> | BILL NUMBER <u>CS/Senate Bill 174/SHPACS</u> |
| | ANALYST <u>Gray</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------------------|------------------|---|-----------|-------------------|---------------------------|----------------------|
| Public Defender Department | No fiscal impact | \$1,141.1 | \$1,141.1 | \$2,282.2 | Recurring | General Fund |
| | No fiscal impact | Indeterminate but may be substantial. See fiscal implications | | | Recurring | County General Funds |

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with HB74, SB123, HJR9
Similar to 2022 SHPAC-Substitute for SB156

Sources of Information

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- New Mexico Attorney General (NMAG)
- Public Defender Department (PDD)
- Department of Public Safety (DPS)
- New Mexico Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of SHPAC Substitute for Bill 174

The Senate Health and Public Affairs Committee Substitute for Senate Bill 174 (SB174) is similar to the 2022 SHPAC-Substitute for SB156. The bill proposes to change pretrial release practices. There are four provisions of SB174, including:

- A new requirement for defendants to file a motion to request a hearing and prove their financial inability to post bail before a court can release them without a bond;
- The creation of a rebuttable presumption that a defendant is ineligible for release if a person is already released on their own recognizance in another case involving a felony charge (a defendant must post bail to be released); and

- The creation of a rebuttable presumption of dangerousness and ineligibility for release if the person is charged with first degree murder.

The substitute makes substantial changes from the original bill. Originally, in any previous case where a person was released on recognizance they would be required to post bail or be detained. This is changed to only those cases involving felonies. Similarly, the original bill provided a rebuttable presumption of dangerousness in any felony case. The substitute scales this down to just include first degree murder.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The fiscal implications of SB174 are indeterminate but possibly significant because it is unclear what effect the bill would have on pretrial detention.

Increased pretrial detention increases system costs. Disallowing release for individuals who would have otherwise been released will increase pretrial detention and increase system costs. However, judges have discretion to detain individuals charged with new crimes while on release, and it is unclear whether the implementation of SB174 will result in substantive changes or increase the number of individuals being detained.

Eighty-eight percent of individuals charged with a misdemeanor offense and released pretrial were not charged with a violent offense. Of those who did, it is likely that most would still be detained under current practice. Current rules give wide discretion to judges to make a pretrial detention determination, and those charged with first degree murder are very likely to be detained pretrial.

LFC estimates the cost to county governments of detaining one defendant for the entire pretrial period at \$8,165 in Bernalillo County and \$12 thousand in the rest of the state. The cost estimate is lower for Bernalillo County due to a shorter average time to case disposition, a result of the Case Management Order governing court deadlines that applies only in Bernalillo County.

Indigency hearings increase system costs. SB174 requires that individuals motion for a hearing to prove they are unable to post bond and secure their release. It is assumed that this additional administrative burden will increase costs for the courts and the Public Defender Department (PDD). PDD estimates an increase in recurring costs of \$1.1 million for attorney FTEs.

Cost of unnecessary detention. Pretrial detention policy seeks to balance the public's interest by not unnecessarily detaining individuals who pose no risk to the community and preventing the release of individuals who will go on to commit a serious crime during the pretrial period. There is an asymmetry in how these two priorities are balanced. The defendants whose lives are upturned due to unnecessary pretrial detention remain invisible and are rarely reported. In contrast, when a defendant is released and commits a serious crime, their name and criminal history are widely reported. Historically, the fiscal impacts of unnecessary detention have been under accounted. This analysis is unable to estimate the impacts given data constraints, but it acknowledges these are significant.

SIGNIFICANT ISSUES

Constitutional Concerns. Agency analysis submitted by PDD, Administrative Office of the Courts, Department of Public Safety, the Attorney General’s Office, and the Sentencing Commission indicate SB174 present potential conflicts with the state constitution and New Mexico Supreme Court rules. Article II, Section 13 of the New Mexico Constitution states, “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.” The rebuttable presumptions in SB174 may alleviate the prosecution of the high burden of proof for pretrial detention currently required by the state constitution. Agencies note the bill’s requirements for defendants to post monetary bail may also run afoul of the constitution by limiting judicial discretion to determine appropriate release conditions, including imposition of bail, and by requiring defendants to affirmatively invoke the applicability of constitutional provisions concerning bail.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB174 conflicts with House Bill 74, which proposes statutory requirements for constitutionally required hearings contained in Article 2, Section 13 of the New Mexico Constitution.

SB174 conflicts with Senate Bill 123, which creates a rebuttable presumption against pretrial release for individuals charged with certain crimes.

SB174 is identical to the 2022 SHPAC-Substitute for SB156.

BG/ne/mg/al/rl