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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13
 LAST UPDATED 03/08/13 HB _____

SPONSOR McSorley

SHORT TITLE Officer-Involved Shooting Public Hearing SB 553/aSPAC

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General’s Office (AGO)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 553 would clarify that a criminal complaint is not needed to initiate a public preliminary hearing regarding a police shooting.

Synopsis of Original Bill

Senate Bill 553 proposes that “If a peace officer discharges a firearm resulting in death while carrying out the duties of (their) office or employment” this bill would require the prosecuting attorney to “present evidence in a preliminary hearing before the district court in whose jurisdiction the incident occurred.”

FISCAL IMPLICATIONS

If adopted, this bill could result in additional hearings and would have a fiscal impact on the courts, prosecutors and police but how much is unknown because no one can predict when a peace officer may have to discharge their firearm and if that will result in a death.

SIGNIFICANT ISSUES

The Attorney General's Office (AGO) provided the following:

The bill does not remove from or convey any additional rights to the target of a felony criminal investigation. However, the bill is not instructive as to many issues: the applicability of the Rules of Evidence, whether the judge has jurisdiction to bind the officer/defendant over for prosecution, whether the judge may *sua sponte* issue subpoenas for testimony and/or evidence, the imposition of time limits, whether a pro tem judge may be appointed, and the right of the accused to call witnesses and/or present evidence.

The Administrative Office of the District Attorneys (AODA) provided the following:

The bill would require the prosecutor to “present evidence in a preliminary hearing” due to a peace officer discharging their firearm with a death resulting, regardless of the facts involved. New Mexico currently recognizes at least three methods that a death can be caused by another person but not result in a crime. The New Mexico rules of professional conduct expressly prohibit a district attorney or their assistants from “prosecuting a charge that the prosecutor knows is not supported by probable cause.” (See, Rule 16-308[A], SCRA 1986) The American Bar Association (“ABA”) in its standards for criminal prosecution and defense functions states that local authority and responsibility for prosecution is properly vested in a district attorney and the decision to initiate criminal proceedings should initially and primarily be the responsibility of the prosecutor. (See, ABA Standards, 3-2.2 and 3-3.4) The purpose of a preliminary hearing is to determine if there is probable cause that a crime was committed and that the person charged was the offender. (See, Rule 5-302, SCRA and Form 9-207, SCRA 1986). That can only be done after criminal proceedings are initiated by a criminal complaint, criminal information or indictment being filed.

POSSIBLE QUESTIONS

The Department of Public Safety (DPS) provided the following questions:

1. Who will “defend” the law enforcement officer that has legalistically NOT been yet charged with a crime?
2. What of the liability interests of the employing agency?
3. Is the officer defended by the public defender's office?

EC/svb