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## F I S C A L   I M P A C T   R E P O R T

SPONSOR	Ivey-Soto	ORIGINAL DATE	2/19/19	LAST UPDATED		HB	
SHORT TITLE	Transfer of Probate Court Jurisdiction, CA	SJR	8				
		ANALYST	Torres				

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications		Indeterminate but minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
New Mexico Attorney General (NMAG)

### SUMMARY

#### Synopsis of Joint Resolution

Senate Joint Resolution 8 proposes to amend the constitutional requirement that each county establish and pay for a probate court of limited jurisdiction (Article 6, Sec. 23) by enabling county commissions to request approval from the Supreme Court to transfer their probate court's jurisdiction to the state court system. Should a county commission make such a request, the Supreme Court would decide by rule whether probate court matters should be transferred to the magistrate or district court sitting in that county.

SJR 8 would allow county commissions – but not require – to decide to eliminate their probate court as a matter of judicial efficiency and local government economy. SJR 8 does not affect the Legislature's power to define probate court jurisdiction.

### FISCAL IMPLICATIONS

Counties currently pay for the costs of their probate courts from local revenues. A transfer of probate court jurisdiction to the state court system could cause local government savings, which the county commission could redirect to other governmental functions.

Any fiscal impact on the judiciary would be proportional to the number of counties that were approved by the Supreme Court for a transfer to the state system. According to the Administrative Office of the Courts, "the state court system has adequate personnel (judges and

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court staff) to handle the small number of simple legal matters that would be transferred into the system. Any additional budget impact on the courts would be therefore de minimis.”

The Secretary of State (SOS) is constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in one newspaper in every county in the state. In 2018, the SOS spent \$16,200 for required newspaper publications; however, the cost is dependent on the number and length of proposed amendments.

For planning purposes, SOS advises \$21.13 per word be used to represent the costs realized in the 2018 general election to estimate the cost of publishing each constitutional amendment. Using this approximation for SJR 8, costs for an election on this resolution are approximately \$11.1 thousand.

### **SIGNIFICANT ISSUES**

Each county is required by the Constitution to maintain a probate court, staffed by a single probate judge. The Constitution limits probate court jurisdiction to uncontested probate matters and provides that the Legislature can, by statute, amend their jurisdiction. In most counties, probate judges serve only part-time and are paid from county funds. Counties determine the method of selecting their probate judge.

Counties have been required since 1949 to establish and maintain a single probate court. In most counties, the probate judges have only enough cases to require part-time service, although all judges are paid a full-time salary from county funds.

The Administrative Office of the Courts notes that

Only counties that desire to transfer probate court jurisdiction to the state court system would be affected by SJR 8. A decision to transfer would require a majority vote of the county commission after public hearing, ensuring public opinion has an opportunity to assess the benefits of a proposed transfer. Nothing about SJR 8 requires counties to abolish probate courts.

Eliminating probate courts would improve public service and reduce public confusion caused by the multiple number of courts with overlapping jurisdiction.

Current probate judges would hold their offices until at least 2022, even if counties elected to exercise their option to transfer probate jurisdiction to the state court system.

Judicial economy would benefit from simplification of the court system. Parties that had previously been able to bring their cases in probate court would still be able to bring those cases in state court. Given the straightforward nature of current probate court cases, state court judges have the expertise and staff resources to handle the small number of transferred cases. Should judges need additional training in probate law, the Judicial Education Center would be able to offer that training.

New Mexico has seven types of courts, more than 32 other states in the country. Of the 50 states and the District of Columbia, New Mexico is one of 15 with separate probate courts.