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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11

SPONSOR Kintigh LAST UPDATED HB 503

SHORT TITLE State Prosecutors Consulting with Feds SB

ANALYST Segura

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
Administrative Office District Attorney (AODA)
New Mexico Sentencing Commission (NMSC)
Public Defender Department (PDD)

SUMMARY

House Bill 503 requires state prosecutors to consult with their federal counterparts on cases which involve concurrent jurisdiction and to attempt to resolve all criminal liability in one forum. The bill bars state prosecution if there is a federal judgment of conviction or acquittal unless there is a substantial state interest which has not been vindicated in the federal case.

FISCAL IMPLICATIONS

House Bill 503 does not contain an appropriation. According to 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 commenced prosecutions.

SIGNIFICANT ISSUES

The AGO indicates that this proposed legislation is contrary to current law and unenforceable.

The AGO further states the following:

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House Bill 503 mandates consultation with federal authorities. The implication is that the authority of state prosecutors could be limited depending on the results of the consultation with federal prosecutors, contrary to NMSA 8-5-2 Duties of Attorney General and NMSA 36-1-18 Duties of District Attorney.

In addition, it is well established that prosecutors have wide discretion in charging criminal acts. “A prosecutor may have the discretion to decide the manner in which to charge the criminal acts.” See *ST.v.Fleming* 140 N.M. 797, 2006 N.M. App. Lexis 140 (N.M. Ct. App., October 30, 2006, Filed)

The AODA raises the following concerns in enactment of House Bill 503;

“There are historical reasons why certain matters can result in concurrent prosecutions, and therefore, two penalties. To now create two classes of cases within the concurrent jurisdiction will only make the lines very fuzzy. Since most concurrent cases are based on the concept of substantial state interests, all cases under concurrent jurisdiction should easily reach that threshold. It is the second prong of the test that will cause difficulty in proving; i.e., that the substantial state interest was not sufficiently addressed in the federal prosecution.

RS/bym