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

SPONSOR Bandy **ORIGINAL DATE** 2/5/2018 **LAST UPDATED** 2/6/2018 **HB** 74

SHORT TITLE Pretrial Detention Courts of Record **SB**

ANALYST Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$65.8	$198.1		$263.9	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 13
Relates to the 2018 General Appropriation Act

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Bernalillo County Metropolitan Court (BCMC)
Administrative Office of the District Attorneys (AODA)
Public Defender Department (PDD)
Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 74 would amend sections of Chapters 34 and 35 of the New Mexico Statutes, to make the Metropolitan Court and the Magistrate Courts courts of record for the purposes of conducting pretrial detention hearings pursuant to the New Mexico Constitution Article II, Section 13. HB 74 would amend Section 34-8A-6 NMSA 1978, to add hearings on "felony charges for which the prosecuting authority has requested a hearing to deny bail" to the types of on-record hearings which the Metropolitan Court is statutorily authorized to conduct. HB 74 would amend Section 35-3-4 NMSA 1978 to make magistrate courts the courts of record "for criminal actions involving a felony for which the prosecuting authority has requested a hearing to deny bail." Finally, HB 74 would amend Section 35-13-2 NMSA 1978 to except "appeals of a decision to deny bail for a defendant charged with a felony" from the requirement of a trial de novo in the district court.

FISCAL IMPLICATIONS

Overall, HB 74 reorganizes the workload in the justice system by requiring pretrial detention hearings take place at the magistrate/metropolitan level. HB74 would require the burden of a pretrial detention hearing take place sooner in the handling of a case but potentially reduces the total number of hearings related to a pretrial detention. Because efficiency is realized later in the process at the expense of greater effort earlier in a case, HB 74's net effect on workloads is difficult to conclude. For prosecutors, a separate hearing at the district court is eliminated but the work needed for pretrial detention hearings is required sooner at the municipal court/magistrate court level, with no chance for a second presentation at the district court if the defendant appeals the ruling. The PDD notes that in rural areas where district and magistrate courts are miles apart, more attorneys would be needed to handle the hearings in dramatically different locations. Lastly, though the district courts would see a reduced workload, the magistrate and metropolitan courts would bear an increased responsibility in conducting and deciding pretrial release issues. Because of the varying effects reducing and increasing workloads across the justice system, the gains or losses in efficiency that may be realized by HB 74 is difficult to quantify in its entirety at this time.

In addition to reorganizing the workload of the justice system, HB 74 would have a direct fiscal impact on the AOC because of the need to update and standardize recording equipment in the magistrate courts. There is currently no standardized recording equipment in the magistrate courts across the state. The AOC estimates that "in order to standardize all the courts to digital equipment which would integrate with the statewide electronic case management system, seventy-two magistrate courtrooms would need new equipment. At $3,290.15 per unit, the total, estimated cost of the new recording equipment for the magistrate courts is $263,890.80."

Currently, the Bernalillo County Metropolitan Court is a court of record in civil cases and in criminal cases involving "driving while under the influence of intoxicating liquors or drugs or involving domestic violence." Because of this, the Metropolitan Court already has digital equipment integrated with the statewide case management system and would not require the purchase of new equipment.

AOC also points out that "HB 74 would add an administrative burden on the courts, which would have fiscal implications due to increased numbers of hearings in the magistrate courts and the need for additional judicial and staff time and resources to accommodate the additional hearings. These implications depend on the number of such hearings requested in these courts, and cannot be quantified at this time."

AODA similarly clarifies that if "HB74 results in reducing the number of hearings on bail issues, costs to the district attorneys should be reduced. However, HB74 will require additional work by prosecutors at an earlier stage in the proceedings, which may counterbalance those savings."

Finally, the PDD states that "if this legislation is enacted, more Public Defender attorneys are likely to be needed across the State, especially in areas where preliminary hearings do not typically happen in the Magistrate/Metropolitan court. In such jurisdictions, the attorneys assigned to detention hearings, and then to the later felony case, do not typically have occasion to go to the lower courts. Detention hearings are scheduled very quickly, but in the courthouse where these attorneys typically already have other hearings scheduled. In these jurisdictions, because the hearings would be in different courthouses, or even different cities/towns, more

attorneys would be needed to handle these hearings. This is even truer in districts where there is not an LOPD office, so additional contract attorneys would be required, though these contracts are often already difficult to fill owing to remuneration rates. The number of additional positions required would have to be determined after implementation of the proposed statutory scheme."

SIGNIFICANT ISSUES

The AOC states that "The proposed amendment to Section 35-13-2(A) NMSA 1978 may be problematic. First, the amendment would make appeals of a decision to deny bail for a defendant charged with a felony not subject to the trial de novo requirement in the district court, without providing for a different standard of review. This amendment does not provide for an appeal directly to the Court of Appeals, and would therefore leave each district court free to interpret which standard of review to apply on these types of cases. A district court, which is not traditionally accustomed to conducting on the record appeals, may struggle with whether to apply an abuse of discretion standard of review or a clearly erroneous standard. In some cases, depending on the application of the law, a de novo standard may still be proper. This could potentially result in several different standards being applied in different judicial districts. Without a clearly established standard of review, the Court of Appeals would be the more appropriate venue for the review of these decisions."

Additionally, removing the requirement of a de novo appeal on pretrial detention hearings poses a potential problem as there have been constitutional challenges to non-lawyer judges making decisions involving possible imprisonment. According to the AOC "the U.S. Supreme Court has only given approval to state systems where defendants are afforded a de novo review by a lawyer judge. *See, North v. Russell*, 427 U.S. 328 (1976). Furthermore, the New Mexico Supreme Court has also given approval of non-lawyer judges making decisions involving possible imprisonment, partially relying on the protection of a trial de novo before a lawyer judge. *Tsiosdia v. Rainaldi*, 1976-NMSC-011. The U.S. Supreme Court has not directly addressed state systems where de novo review of non-lawyer judges' decisions is not guaranteed… Since the statutory scheme in New Mexico has always allowed for appeals de novo from magistrate courts, this question of non de novo review has never been decided by the New Mexico appellate courts. The amendment proposed by HB 74 could make this question ripe for review."

The PDD provided the following detailed analysis of HB 74:

> First, the proposed legislation may not do what it is intended. A. – the bill, though it makes the lower courts a court of record on that issue, does not necessarily increase the court's jurisdiction to include doing such hearings. That comes down to the question of whether or not this would be reasonably considered to be "commit[ting] to jail" the defendant. B – a hearing under Rule 5-409 is not "a hearing to deny bail," but a hearing to have a defendant declared too dangerous to be released. Arguably, a "hearing to deny bail" would be a hearing under 5-403 (and related Magistrate and Metropolitan court rules), where conditions of release are being revoked.
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> Second, even if the statute giving lower courts the ability to hold such hearings, the court rules presently in place do not allow for the lower courts to hear such motions. Under the Magistrate and Metropolitan court rules (6-409 and 7-409, respectively), the courts are required to send such hearings to the district court. In the recently published case of *State ex rel. Torrez v. Whitaker*, 2018-NMSC-___, ¶ 73, the Court made very clear that

procedural rules are exclusively the province of the courts, not the Legislature. This would likely provide the basis for a challenge, and there is no assurance that a change in the statute would have immediate effect. Under normal rule-making procedures by the Court, any change proposed in 2018, as these changes would be, would be published in 2019 for comment, with an eye toward making them official in time for 2019. Thus, any change (under normal circumstances) would not come into effect for nearly 2 years.

Third, the issues involved in a motion to detain a defendant pretrial are extraordinarily important. The Supreme Court has made clear time and again that, barring extreme circumstances, a defendant has a constitutional right to be released pretrial. The Constitutional amendment reinforced that understanding, laying out limited, specific circumstances in which a defendant may be detained pretrial. These important legal issues should be decided by a district court judge who has the appropriate type and level of experience and education to be making such decisions. This is especially important since a person could be held for over two years without any opportunity to be released, despite the presumption of innocence inherent in all criminal cases here in the United States of America. Further, it is extremely difficult to revisit a detention order under the current rules. The rules purport to grant a right to an "expedited" trial, though there is no definition of such a right. Regardless, it is inappropriate for a lower court to determining which cases require an expedited trial in a high court; the district court perhaps would not have made the same decision, but would be unable to revisit the lower court's decision under the current rules.

PERFORMANCE IMPLICATIONS

Indeterminate but significant.

ADMINISTRATIVE IMPLICATIONS

Depending on the number of such hearings requested by the prosecuting authority, HB 74 would have an administrative impact on the courts in order to facilitate the additional hearings. See fiscal impact. Additionally, the Supreme Court will need to review and revise its rules for the metropolitan and magistrate courts to reflect this new system.

DUPLICATION, RELATIONSHIP

SB 13 Pretrial Detention Courts of Record is the Senate duplicate bill of HB 74. The 2018 General Appropriation Act contains a special appropriation for the purpose of HB 74 and associated costs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

IT/jle/sb