

LFC Requester:	
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**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date Jan. 16, 2018
Bill No: HB74

Sponsor: Paul C. Bandy
Short Title: Pretrial Detention Courts of Record

Agency Code: 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	(unknown)	(unknown)	(unknown)	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB13; SB44
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB74 amends statutes governing metropolitan courts and magistrate courts to make those courts “courts of record” for felony charges for which the prosecuting authority has requested a hearing to deny bail. Appeals from decisions in such cases are heard by the district court, in the manner set forth by supreme court rule.

Under current statutes, metropolitan courts and magistrate courts are not “courts of record” on bail hearings, and appeals of their decisions are heard “de novo” in district court.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

If HB74 results in reducing the number of hearings on bail issues, costs to the district attorneys should be reduced. However, as discussed below, HB74 will require additional work by prosecutors at an earlier stage in the proceedings, which may counterbalance those savings.

Metropolitan and magistrate courts will have additional costs related to recording bail proceedings. The workload of the district courts may be reduced, as their review of decisions made on pretrial release in many felony cases will consist of “on record” review, instead of conducting evidentiary hearings “de novo.”

SIGNIFICANT ISSUES

In 2016, New Mexico amended Art. II, Section 13 of its constitution, the provision governing pretrial detention. The amendment provided, in part, to permit a court of record to order the detention of a felony defendant pending trial if the prosecutor proves by clear and convincing evidence that the defendant poses a danger to the safety of any person or the community and that no release condition or combination of conditions will reasonably ensure the safety of any other person or the community. A court of record is a court in which the proceedings are recorded, and typically the appeal from a decision of a court of record consists of a higher court reviewing the record for error. Under current law, metropolitan courts are courts of record only for certain

types of cases, not including bail hearings. Magistrate courts are not courts of record. Appeals from the metropolitan court on cases not “of record” and appeals from magistrate courts are heard by the district court “de novo” – an appeal consists of a new hearing or trial at the district court level. Therefore, under current law, if pretrial detention decisions are made at the metropolitan court or magistrate court level, the defendant may appeal and have a new evidentiary hearing at the district court level.

HB74 amends the statutes governing the metropolitan courts and the magistrate courts to make them “courts of record” for felony charges for which the prosecuting authority has requested a hearing to deny bail, and making those proceedings subject to appeal on the record by the district court.

HB74 therefore permits metropolitan courts and magistrate courts to make decisions regarding pretrial detention in felony cases under the terms of the new constitutional amendment. Those decisions, if appealed, will be reviewed by the district court on the record – no second evidentiary proceeding will be held. The bar is high for obtaining pretrial detention under the new constitutional amendment -- prosecutors must prove by clear and convincing evidence that the defendant poses a danger to the safety of any person or the community and that no release condition or combination of conditions will reasonably ensure the safety of any other person or the community. Under HB74 the decision on whether that bar is met may be determined by a metropolitan court or magistrate court, and the district court will only be able to review the record for error. If pretrial detention issues in felony cases are brought to metropolitan and magistrate courts, they will be the courts making those determinations, and the workload of the district courts will be reduced.

PERFORMANCE IMPLICATIONS

Prosecutors must be able to meet their burden to show the need for pretrial detention at the municipal court/magistrate court level, with no chance for a second presentation at the district court level if the defendant appeals the ruling.

Magistrate and metropolitan courts may bear increased responsibility in conducting and deciding pretrial release issues; district courts may see a reduced workload.

ADMINISTRATIVE IMPLICATIONS

Metropolitan courts will need to expand their “on record” arrangements to include proceedings on pretrial detention in felony cases. Municipal courts, which are not currently equipped for “on record” proceedings, will need to make those arrangements. The Supreme Court will need to review and revise its rules for the metropolitan and magistrate courts to reflect this new system.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB13 is the senate version of this bill.

SB44 affects bail issues by presuming that a person charged with leaving the scene of an accident is a flight risk.

TECHNICAL ISSUES

The title of HB74 makes the intent of the legislation clear. It is to make “magistrate and metropolitan courts courts of record for purposes of bail hearings for pretrial detention of certain persons accused of a felony” (emphasis added). The language in the amendments is less clear. The amendment to the metropolitan court provisions states that it is a court of record for “felony charges for which the prosecuting authority has requested a hearing to deny bail.” The amendment to the magistrate court provision states that it is a court of record for “criminal actions involving a felony for which the prosecuting authority has requested a hearing to deny bail.”

The title of HB74 focuses on “bail hearings.” The amendments HB74 proposes are much broader, applying to “felony charges” and “criminal actions involving a felony.” To avoid any confusion, it might be helpful to clarify that HB74 is not giving metropolitan courts and magistrate courts jurisdiction over felony charges or actions involving a felony, but only making them courts of record for purposes of bail hearings for pretrial detention of persons accused of a felony.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Metropolitan courts and magistrate courts will not be able to hear proceedings for pretrial detention of persons accused of a felony.

AMENDMENTS

Replace language in the proposed amendments as follows:

In Section 1, change Paragraph C of 34-8A-6; replace “or felony charges for which the prosecuting authority has requested a hearing to deny bail” with “or bail hearings for pretrial detention of persons accused of a felony,” in two places.

In Section 1, change Paragraph D of 34-8A-6; replace “or felony charges for which the prosecuting authority has requested a hearing to deny bail” with “or bail hearings for pretrial detention of persons accused of a felony,” in two places.

In Section 2, change Paragraph C of 35-3-4; replace “A magistrate court is a court of record for criminal actions involving a felony for which the prosecuting authority has requested a hearing to deny bail,” with “A magistrate court is a court of record for bail hearings for pretrial detention of persons accused of a felony.”