

LFC Requester:	
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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 Feb. 6, 2019
Bill No: SB460

Sponsor: Daniel A. Ivey-Soto
Short Title: Grand Jury Changes

Agency Code: 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	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: none found
Duplicates/Relates to Appropriation in the General Appropriation Act: none found

SECTION III: NARRATIVE

SB460 amends Section 31-6-11 NMSA 1978, governing the presentation of evidence before a grand jury, to require the evidence presented at grand jury to be evidence that would be admissible at trial.

SB460 requires that the written notice provided to the target of the grand jury investigation include

- the essential facts of the charge or accusation;
- Inform the target of the right to testify no earlier than ten days after receiving the target notice if the target is in custody, or twenty days after receiving the target notice if the target is not in custody; and
- Inform the target of the right to alert the grand jury to the existence of evidence that would disprove or reduce the charge or accusation or that would make an indictment unjustified, by notifying the prosecuting attorney in writing regarding the existence of that evidence no later than forty-eight hours before the grand jury session is completed.

SB460 provides that the district court may review the grand jury proceeding, the target notice, the indictment and the relevancy, competency and lawfulness of the evidence that was presented to the grand jury to determine compliance with this action, and may dismiss the indictment without prejudice upon its finding of a violation of this section.

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.

As discussed below, SB460 will complicate grand jury proceedings, and may make charging crimes more expensive for the district attorneys.

SIGNIFICANT ISSUES

1. Allowing only Evidence that would be Admissible at Trial.

Currently, the evidence presented to a grand jury must be “lawful, competent and relevant” but the rules of evidence do not apply. SB460 would require all evidence presented to the grand jury to be evidence that would be admissible at trial.

The admissibility of evidence is a highly litigated issue, both at trial and at suppression hearings before trial. There is no process in the grand jury proceeding for such issues to be litigated (especially if the target and target's counsel do not appear). Must each questionable piece of evidence be reviewed by the district court? Does that happen before presentation to the grand jury, or only on review of completed grand jury proceedings? Is review automatic, or does it occur only upon request of the indicted defendant? Must any evidentiary issues be raised at the time of indictment, or may the indictment be challenged at a later time?

Some commonly contentious evidentiary issues may not be relevant in a grand jury setting. For example, New Mexico has had many cases involving the confrontation clause in recent years. But are confrontation clause issues relevant at the grand jury stage, when the target may not even be present to confront the witnesses?

At a preliminary hearing (the alternative charging method) the defendant is present and represented by counsel. But even here, the Rules of evidence are relaxed. The Committee Commentary to Rule 6-202 of the Rules of Criminal Procedure for the Magistrate Courts states in part:

[T]he Rules of Evidence remain generally applicable to preliminary examinations, subject to specific exceptions for certain types of evidence not admissible at trial. See Lopez, 2013-NMSC-047, ¶ 4 (noting that the "Rules of Evidence generally govern proceedings in preliminary examinations" but explaining that Rule 6-608(A) NMRA of the Rules of Criminal Procedure for Magistrate Courts "provides a specific exception to our hearsay rule for admissibility" of certain types of written laboratory reports). NM Crim. Proc. Dict. Court Rule 5-302 Preliminary examination (New Mexico Rules of Criminal Procedure for the District Courts (2018 Edition))

2. Remedy for Dismissal of the indictment.

SB460 allows the district court to dismiss an indictment without prejudice if any provision in the section is violated. This means the prosecution may re-indict, following the provisions of the section. But what happens if the prosecution disagrees with the district court's ruling on the admissibility of a crucial piece of evidence? If they cannot indict without that evidence, SB460 provides no recourse. Again, evidentiary issues are often litigated, and appealed. The district court's ruling may not be correct. But it could stop an indictment.

3. Extending the time periods.

SB460 gives the target the right to testify "no earlier than ten days after receiving the target notice" if the target is in custody, or twenty days if the target is not in custody. Currently, the time periods are four and ten days.

PERFORMANCE IMPLICATIONS

District attorneys will have to put the essential facts of the charge or accusation into the notice, increase the time period between the notice and the grand jury proceeding, make more detailed presentations to the grand jury to ensure that the evidence presented would be admissible at trial, and determine if there are any extraordinary remedies that might be pursued if the district attorney disagrees with an adverse ruling on an essential piece of evidence. It is possible that the changes made by SB460 could cause prosecutors to decide to charge some cases through

information and preliminary hearing rather than through grand jury indictment.

ADMINISTRATIVE IMPLICATIONS

As discussed above, the **process for district court review is unclear.**

SB460 will require rule changes and changes to the supreme court's forms for notice to a grand jury target.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed.