

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto: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:*

<b>Original</b>	<input checked="" type="checkbox"/>	<b>Amendment</b>	<input type="checkbox"/>	<b>Date</b>	<u>1-16-17</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>SJR1</u>

<b>Sponsor:</b>	<u>Peter Wirth</u>	<b>Agency Code:</b>	<u>264</u>
<b>Short Title:</b>	<u>Statutory Appellate Jurisdiction, CA</u>	<b>Person Writing</b>	<u>Gail MacQuesten</u>
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB72  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

SJR1 proposes to amend Article 6 of the New Mexico constitution to give the legislature authority to provide for appellate jurisdiction by statute.

#### **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.

There are no fiscal implications for the district attorneys. There will be costs to the state to submit the proposed amendments at the next general election or special election.

If the proposed amendments pass, and the legislature changes the current appellate structure, there may be significant fiscal and procedural implications for the district attorneys, as well as the courts, but that impact cannot be assessed until a new structure is proposed.

#### **SIGNIFICANT ISSUES**

New Mexico's constitution currently provides that appeals from a judgment of the district court imposing a sentence of death or life imprisonment shall be taken directly to the supreme court. N.M. Const. art. VI, § 2. SJR1's proposed amendment would remove that provision, and would allow the legislature to determine if appeals from district court cases imposing a sentence of death or life imprisonment should go to the court of appeals or to the supreme court.

New Mexico's constitution currently provides that appeals from probate courts and other inferior courts are to the district courts, and in such appeals trial shall be had de novo unless otherwise provided by law. SJR1's proposed amendment would remove the requirement that those appeals be to the district court, and remove the presumption that the appeal would be in the form of a trial de novo. Instead, appeals from such courts would be "as provided by law." By removing the requirement that appeals from probate courts and other inferior courts go to district court, SJR1's proposed amendment would allow the legislature to determine if appeals from probate courts and inferior courts should go directly to the court of appeals, or, for that matter, to the supreme court.

## **PERFORMANCE IMPLICATIONS**

There are no performance implications from SJR1 itself, but if the amendments proposed by SJR1 are adopted, future legislation changing the appellate structure could have serious implications for litigants (including the district attorneys) and the courts. The performance implications depend on what actions the legislature decides to take.

Currently, appeals from a sentence of death or life imprisonment are reviewed directly by the supreme court. This ensures that the highest court in the state reviews these serious cases. It also shortens the time spent in appellate review, because the case is not first heard in the court of appeals. If the legislature determines that such cases should be heard by the court of appeals, that could extend the time spent on such appeals. Once the case has been decided by the court of appeals, the defendant may seek review by the supreme court by filing a petition for writ of certiorari. Essentially, if the supreme court agreed to hear the case, the appeal would be heard a second time.

Currently, “[t]he specific constitutional grant of appellate jurisdiction to the district court from judgments of limited-jurisdiction courts prevents direct appeals from metropolitan court and other lower tribunals to the Court of Appeals.” State v. Armijo, 2016-NMSC-021, ¶ 23. As the court explains in Armijo, historically New Mexico’s courts of limited jurisdiction were not courts of record. Because there was no record made in the court of limited jurisdiction, there was no record for an appellate court to review. Instead, appeals taken from those courts were necessarily heard as trials *de novo*. A new trial was conducted by the reviewing court, as if no trial had been conducted below. Trials *de novo* were conducted by the district court, which is a trial court. The court of appeals and the supreme court do not conduct trials, but instead review the records of trial courts for error. In 1979, circumstances changed with the creation of the metropolitan court. The metropolitan court was a court of record for civil actions, and in 1993 it became a court of record for criminal actions involving DWI and criminal actions involving domestic violence. Yet, because of the constitutional requirement that appeals from inferior courts must go to the district court, appeals from metropolitan court cannot be heard directly by the court of appeals. Instead, the case is tried *de novo* in district court. (An appeal may then be taken to the court of appeals.) If SJR1’s proposed amendments are adopted, the legislature could change the appellate structure to allow appeals from limited jurisdiction courts in on-record cases to be heard directly by the court of appeals.

As the court noted in Armijo, “[o]pinions will differ on whether the current process of taking on-record appeals to the district court, which is a trial court rather than an appellate court, makes the best use of the two different kinds of courts. And one may question why misdemeanor cases could receive up to three levels of record review, from the district court to the court of appeals to the supreme court, while felony convictions resulting in sentences of death or life imprisonment merit only one record review, see N.M. Const. art. VI, § 2 (giving this Court exclusive appellate jurisdiction over an appeal from a final district court judgment ‘imposing a sentence of death or life imprisonment’). This anomaly raises questions about judicial economy and fairness.” Armijo, 2016-NMSC-021, ¶ 33.

## **ADMINISTRATIVE IMPLICATIONS**

See Performance Implications, above.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB72, which would reinstate the death penalty, specifically provides that a sentence of death shall be automatically reviewed by the supreme court.

#### **TECHNICAL ISSUES**

None noted.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

None proposed.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Appellate jurisdiction will be determined by existing constitutional provisions. Cases in which a sentence of death or life imprisonment was imposed will be heard by the supreme court. Appeals from courts of inferior jurisdiction, including on-record cases from the metropolitan courts, will be heard by the district court.

#### **AMENDMENTS**

None proposed.