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FISCAL IMPACT REPORT

BILL NUMBER: House Joint Resolution 2

SHORT TITLE: Denial of Bail, CA

SPONSOR: Chavez/Reeb

LAST UPDATE: 2/6/2026 **ORIGINAL DATE:** 1/14/2026 **ANALYST:** Jacobs

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Election Costs	No fiscal impact	\$35.0 to \$50.0	No fiscal impact	\$35.0 to \$50.0	Nonrecurring	General Fund
Courts, if enacted	At least \$117.1	At least \$351.1	At least \$351.1	At least \$819.3	Recurring	General Fund
District Attorneys, if enacted	See "Fiscal Implications"	See "Fiscal Implications"	See "Fiscal Implications"	See "Fiscal Implications"	Recurring	General Fund
PDD, if enacted	See "Fiscal Implications"	At least \$2,700.0	At least \$2,700.0	At least \$5,400.0	Recurring	General Fund
Cost to Counties	\$1,266.7 to \$3,100.0	\$3,800 to \$9,300.0	\$3,800 to \$9,300.0	\$8,866.7 to \$21,700.0	Recurring	General Fund
NMAG	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	At least \$1,383.8	At least \$6,886.1	At least \$6,851.1	At least \$15,121	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 163

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Administrative Office of the Courts
Administrative Office of the District Attorneys
Public Defender Department
New Mexico Sentencing Commission
New Mexico Adult Parole Board
New Mexico Corrections Department

SUMMARY

Synopsis of House Joint Resolution 2

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House Joint Resolution 2 (HJR2) would amend Article II, Section 13, of the New Mexico Constitution relating to pretrial detention.

HJR2 would allow courts to make presumptions on a defendant's threat to the community and deny the defendant pretrial bail if they are charged with a dangerous or violent felony offense. HJR2 would remove the requirement that a prosecutor request a hearing and prove by clear and convincing evidence the need for pretrial detention. Instead, HJR2 would require a prosecutor "present" this evidence while allowing defendants an opportunity to rebut the presumption by a preponderance of the evidence. HJR2 would also expand detention eligibility by allowing courts to detain individuals based on their assessed flight risk.

HJR2 would add clarifying language to Subsection A of Article II, Section 13, to specify the section applies to "people charged with" capital offenses. The joint resolution would also replace "no release conditions will reasonably protect" with "release conditions will not reasonably protect" in Subsection C. Finally, HJR2 would replace "defendant" with "person" throughout the section and remove language in Subsection D made redundant by earlier changes.

The joint resolution provides the amendment be put before the voters at the next general election (November 2026) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$35 thousand to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

Should this proposed constitutional amendment be approved by voters, there would be a substantial cost to the agencies that compose New Mexico's criminal justice system.

For applicable cases, HJR2 would relieve prosecutorial authorities of the requirement to request a hearing for pretrial detention. This would reduce the administrative burden on district attorney offices, specifically their intake units. HJR2 would also allow charges themselves to satisfy the prosecutor's burden to prove detention is necessary. With this lower evidentiary bar, the burden on prosecutors to compile evidence before the hearing would be reduced.

HJR2 would shift the burden of proof by allowing a defendant to rebut presumptions of their dangerousness and argue for release pending trial. Analysis from the Public Defender Department (PDD) indicates its attorneys spend an average of two hours and its support staff spend 1.5 hours preparing for each pretrial detention hearing. As the agency notes, the hearings do not require evidence from the defense beyond a basic biographical description. The defense is also not provided with any information from the state at these hearings beyond a police officer's criminal complaint. Defendants would be responsible for gathering exonerating evidence prior to hearing if HJR2 were to pass, and PDD estimates it would need six attorney hours and 6.5

support staff hours per hearing. The agency also reports there were approximately 1,500 pretrial detention hearings in Albuquerque alone for 2025, with 19.5 percent of the detention motions for non-violent charges and a detention rate of 54 percent. PDD conservatively estimates HJR2 would result in at least 800 additional hearings in the city alone. To absorb this workload, the agency says its Albuquerque office would require 4 additional felony-level attorneys and 5 additional support staff. The resulting, recurring cost for PDD offices is estimated at about \$2.4 million statewide. The agency also anticipates higher expenses for contract attorneys should HJR2 pass. About one-third of hearings are handled by contractors, and without the administrative infrastructure of a PDD office, the increased preparation and litigation demands could raise flat-fee payments by an estimated \$250 per hearing. This would result in approximately \$379,500 in additional recurring contract costs.

HJR2 significantly expands the types of defendants eligible for pretrial detention and the basis on which they may be detained. House Bill 165 from the 2025 legislative session similarly sought to define “dangerous felony offenses” and hold those accused of qualifying charges in custody pending trial. Analysis from the Administrative Office of the Courts (AOC) estimated an additional 797 to 1969 individuals would be eligible for pretrial detention in Bernalillo County alone. The analysis also noted pretrial detention hearings took an average of three hours of court time at a cost of \$178.35 per hearing. The estimated cost per hearing from AOC was derived from an analysis of the estimated costs of House Bill 80, Senate Bill 123, and House Bill 44 from 2022, 2023, and 2024 legislative sessions; with HJR2 including assessed flight risks, the court resources needed would increase from these original estimates.

HJR2 would likely increase the number of defendants held pending trial. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center from 2024. Using AOC’s estimate for the increased number of hearings and a detention rate of roughly 50 percent, this analysis assumes that HJR2 would result in between 394 and 973 additional pretrial detainees annually. Assuming that these detainees are held for approximately six months, HJR2’s annual fiscal impact to county jails would range between \$3.8 million and \$9.3 million.

SIGNIFICANT ISSUES

AOC reports the legislation’s lack of binding language mirrors existing statute. The amendments to Subsection C provide the court “may” presume a need for detention, in which case the court “may” deny the defendant bail. Judges would continue to analyze the circumstances of a particular case and determine whether pretrial detention is necessary. AOC’s analysis also notes the inclusion of assessed flight risk reinforces existing procedures, as the judiciary already utilizes a risk analysis tool that considers a defendant’s risk of failing to appear to court. PDD analysis corroborates the tool’s effectiveness:

An August 2021 study by UNM’s Center for Applied Research and Analysis, Institute for Social Research 1 shows that the vast majority of people who should be held are, and that people who are not detained largely do not commit new crimes (only 14%), much less violent crimes (only 5%). In fact, most violations are of technical conditions of release, which can and often do result in detention thereafter. Proponents of HB5 during the 2022 session asserted that the 14% and 5% numbers are underinclusive because they only account for people who are “caught” committing crimes on pretrial release, but the existence of any other “new crimes” by people on release is unknown and cannot be the basis for policy-making. Nonetheless, it is likely to be consistent with the overall trend of

being only a fraction of the overall crimes committed and not a significant percentage or driver of the crime rate.

Several responding agencies noted the joint resolution's ambiguity and the need for supplemental legislation should HJR2 pass. As AOC highlights, it is unclear if prosecutors could argue for detention without a hearing or which legal actor would request one in the prosecution's place. Court rulings or further legislation could be necessary to determine the structure of future pretrial detention hearings. Introduced House Bill 163 would designate certain offenses as dangerous or violent felony offenses, and the New Mexico Sentencing Commission (NMSC) provides the following analysis of the bill:

Article 2, Section 13 of the New Mexico Constitution was changed substantially in 2016. Every Legislative Session since there have been attempts to unwind those changes, sometimes through statute, sometimes through a new amendment to the state Constitution. This bill presents a new approach, making the bill effective upon the ratification of the paired constitutional provision, and listing the many crimes that would be considered dangerous or violent felony offenses. A problem with this approach is that it creates a second list of what should be considered violent offenses in state law – compare the definition of “serious violent offense” at Section 33-2-34(N)(4) NMSA 1978, the earned meritorious deductions statute, which this statute mirrors mostly, but not completely.

AOC's analysis also highlights the change in Subsection C from “no release conditions will reasonably protect” to “release conditions will not reasonably protect”. The agency notes it is unclear whether this is meant to reduce the prosecutor's burden of proving the need for detention or if it is simply a language clarification.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the District Attorneys (AODA) reports HJR2 aligns the state with federal constitutional standards. The agency provides:

HJR2 is likely to produce a modest short-term increase in county detention costs as more high risk defendants charged with dangerous or violent felonies are held pretrial, but the overall fiscal impact would be mitigated or cost-saving when viewed across the entire justice system. Because a small number of offenders commit a disproportionate share of serious and repeat crime, detaining that recidivist group prevents new offenses that would otherwise generate substantial costs for law enforcement, courts, emergency services, and victim support systems. Any additional workload for prosecutors, public defenders, and courts is expected to be absorbed within existing resources, and the avoided costs from reduced reoffending would likely outweigh the incremental expenses associated with pretrial detention.

On the issue of compliance with federal standards, PDD notes:

The federal system which employs a narrow set of presumptively dangerous crimes to determine bail (without a corresponding constitutional provision like New Mexico's) operates with The Federal Speedy Trial Act in mind, which requires that trial be held within 70 days of formal charging to ensure that defendants held without bail do not languish in jail while still presumed innocent.

AOC anticipates litigation challenging the definition of a dangerous or violent felony offense

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should HJR2 pass.

HJ/SEC/dw/ct/cf/ct