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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/16

SPONSOR Adkins/Ruiloba **LAST UPDATED** _____ **HJR** 13/aHJC

SHORT TITLE Denial of Bail to Certain Defendants, CA **SB** _____

ANALYST Downs

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	>\$104.0			>\$104.0	Nonrecurring	Election Fund
	>\$966.7	>\$966.7	>\$966.7	>\$2,900.0	Recurring	County Detention Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Joint Resolution 1 and House Joint Resolution 20

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Judicial Standards Commission (JSC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Attorney General's Office (AGO)
 Department of Public Safety (DPS)
 Secretary of State (SOS)
 New Mexico Corrections Department (NMCD)

Responses Not Received From

Association of Counties
 Municipal league

SUMMARY

Synopsis of HJC amendment

The House Judiciary Committee amendment to House Joint Resolution 13 essentially loosens the original requirements for denying bail by inserting an “or” instead of an “and” between ensuring defendant’s reappearance and protecting community safety. Formerly, the “and” implied that the prosecution had to prove by clear and convincing evidence that the defendant was both a flight risk *and* as danger to the community, but with this amendment it is either/or. Additionally, the amendment removes the requirement that only a court of record can make the judgment to deny bail, opening the discretionary privilege up to magistrate courts as well as Bernalillo County Metropolitan court.

Synopsis of Original Bill

House Joint Resolution 13 purposes an amendment to Article 2, Section 13 of the Constitution of New Mexico to allow courts of record to deny bail to a defendant charged with a felony when a prosecutor requests a hearing to deny bail and provides clear and convincing evidence that the defendant will not come back to court, and is a danger to the community. The amendment will be put on the ballot in the next election for approval by the voters.

FISCAL IMPLICATIONS

According to the New Mexico Sentencing Commission, the cost to detain a defendant is \$72.03 per day and the average length of stay for felons is 147 days. Using those figures, it can be estimated that it costs counties \$10.6 thousand per detainee.

In its analysis of SJR 1, a related bill, AOC reported that between FY12 and FY14 there was an average of 85 defendants per year who were threats to the community but were able to pay a bond of \$10 thousand or more and be released. Additionally, AOC reported in those three years, 19 dangerous defendants were able to pay bonds of \$100 thousand or more and secure release. This amendment to the constitution would presumably allow those defendants to be detained without any bail.

By multiplying the cost of detention per felon (\$10.6 thousand) by 274 (AOC’s estimated 85 defendants per year with a \$10 thousand bond plus the 19 defendants with a \$100 thousand bonds), it can be estimated that the cost of implementing HJR 13 will be at least \$2.9 million in detention expenses for the counties over the course of three years.

Additionally, the Secretary of State will incur costs to publish the amending language in at least one newspaper in each county for four weeks before the election, and to print the amendment on ballots. According to the SOS, in 2010 the publication cost for 5 constitutional amendments was \$520 thousand, or roughly \$104 thousand per amendment.

SIGNIFICANT ISSUES

The Attorney General indicated courts will see an increase in hearings at the inception of a case when a prosecutor requests a hearing to prove the defendant too dangerous to release pending trial. The AG also stated that there is not as much discretion given to the courts by this

amendment as it may appear, since courts can only deny bail to a defendant if a prosecutor requests a hearing.

The Public Defender Department stated that appeals on rulings to deny bail will probably increase, resulting in possible need to hire attorneys who are experienced in the appeals process. According to PDD, the midpoint salary for an associate attorney is \$93.1 thousand and for a trial attorney is \$103.9 thousand. According to AOC, any increased hearings in association with HJR 13 will fit within the existing structure and will not cause additional impact.

Though no risk assessment is indicated in the language of the amendment, according to AOC, the Second Judicial District Court and the Bernalillo County Metropolitan Court are currently doing a pilot run of a risk assessment instrument to determine pretrial release conditions. The assessment includes flight risk, community ties, employment, criminal history, etc. If the pilot is a success AOC will look into the use of an advanced risk assessment developed by the Laura and John Arnold Foundation. The instrument is inexpensive to use, but could require additional staff and supplies in the future.

The New Mexico Corrections Department stated that keeping defendants who are likely to abscond in jail before trial will free up the time and resources the department currently expends when defendants do not appear for trial. NMCD also stated that public safety would be benefitted by keeping defendants who are dangerous in jail before trial, since their release most likely would jeopardize public safety.

RELATIONSHIP

House Joint Resolution 13 relates to Senate Joint Resolution 1. SJR1 includes the same provision to deny bail to dangerous criminals but also includes a provision to allow defendants who are not dangerous to be released without bail.

HRJ 13 also relates to HJR 20, which allows courts to deny bail to defendants only in certain felony cases, including violent and sexual assaults. HJR 20 also includes three assessment criteria, which are not included in HJR 13, for deciding release conditions. Responding analyses expressed concern over HJR 20's restrictions on judicial discretion.

JD/jle/jo