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## FISCAL IMPACT REPORT

**ORIGINAL DATE**  
**LAST UPDATED**

**SPONSOR** HSCAC **HJR** 20/HSCAC

**SHORT TITLE** Denial of Bail for Certain Felonies, CA **SB** \_\_\_\_\_

**ANALYST** Downs

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$104.0	\$0.0	\$104.0	Nonrecurring	Election Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Joint Resolution 1 and House Joint Resolution 13

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Attorney General’s Office (AGO)  
 New Mexico Sentencing Commission (NMSC)  
 New Mexico Corrections Department (NMCD)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

The House Safety and Civil Affairs Committee substitute for House Joint Resolution 20 amends Article 2, Section 13 of the New Mexico constitution to allow judges to deny bail when a defendant is charged with an act of violence or sexual assault in addition to the current provision that bail may be denied when a defendant is charged with a capital offense or a violent felony.

The substitute allows judges to consider the seriousness of the offense, the previous criminal record, and the probability of the defendant reappearing when fixing the amount of bail and also allows judges to release defendants on recognizance without setting a bail.

Appeals of bonds or denials of bonds shall be heard on an expedited schedule, according to the substitute, and the prosecutor must present evidence to justify the amount. The bond may only be

set once, based on the original offense, and if the defendant has followed the conditions of release the court must consider the new bond as a continuation of the original bond.

## **FISCAL IMPLICATIONS**

The Administrative Office of the District Attorneys (AODA) stated that if the substitute is adopted and is approved by the voters, there could be an increase in bail hearings which require detailed showings under the bill's provisions. This could result in a need for additional attorneys in the District Attorney's Offices, the Attorney General's Office, and the Public Defender Department.

The Administrative Office of the Courts reported that any additional hearings or appeals resulting from the enactment of this bill would be absorbed within the existing structure and would not incur any additional cost to the judicial system.

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.

The New Mexico Corrections Department (NMCD) reported that there could be savings in association with the constitutional amendment which will detain defendants who are likely to abscond. Removing the possibility for defendants to abscond removes the responsibility for NMCD to find them. Conversely, enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to NMCD, the average cost per day to house an inmate in a state prison is \$123, or about \$45,250 per year. A longer length of stay would increase that cost. In addition, sentencing enhancements could contribute to overall prison population growth, as increased lengths of stay decrease releases relative to the rate of admissions. The NMCD general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

Societal benefits, particularly to potential victims, would accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

## **SIGNIFICANT ISSUES**

According to AODA, by using 'offenses' instead of 'felonies,' the bill allows bail to be denied in misdemeanor cases. AODA also expressed concern on the bill's containment of multiple standards of evidence, stating,

“... [The HSCAC substitute of] HJR 20 focuses on a showing of dangerousness, but it applies different standards depending on the crime charged. For capital cases and violent first degree felonies, bail may be denied if the court finds by clear and convincing

evidence that no release conditions will reasonably protect the safety of any other person or the community. For offenses involving acts of violence or sexual assault, the court must find, by probable cause that there is clear and convincing evidence that the release of the defendant would result in great bodily harm to others.”

AODA also stated that the use of ‘probable cause’ and ‘substantial likelihood’ that a defendant’s release would result in great bodily harm to someone else is an unclear combination of two standards of proof.

### **CONFLICT, RELATIONSHIP**

The HSCAFC substitute of HJR 20 relates to Senate Joint Resolution 1, which not only allows judges to detain any dangerous criminal before trial, but also disallows the practice of detaining defendants who do not pose a threat or a flight risk simply because their of inability to pay bail. According to AOC, though HJR 20 does allow release on recognizance and includes the constitutional guarantee against excessive bail and fines,

“Experience in other jurisdictions has been that unless detention for lack of money is not explicitly prohibited, detention authority based on evidence of dangerousness, with due process guarantees, will not be used. For example, although preventative detention existed in Washington DC, it was only after detention for inability to meet a financial condition was adopted that the existing preventative detention authority began to be used.”

HJR 20 also relates to HJR 13, which does not include considerations for releasing non-dangerous defendants who cannot afford bail, but focuses on the detention of dangerous defendants. HJR 13 does not contain the specific crimes included in HJR 20, and does not include release on recognizance.

According to PDD, HJR 20 creates a loophole, allowing even a nondangerous criminal to be held on unaffordable bail, a loophole that is closed in SJR 1. PDD also stated that the substitute for HJR 20 gives judges less discretion than the current constitutional provisions by allowing pretrial detention only in cases of sexual or violent crimes, and by limiting the factors for consideration while setting bail to just three.

HJR 20 conflicts with Rules 5-401c, which includes the following factors for consideration when setting bail: whether the offense is a crime of violence or involves a narcotic drug, weight of the evidence against the person, criminal history, character and physical and mental condition, family ties, employment status and history, residence, community ties, likelihood to recommit, probation or parole status, dangerousness, or likelihood to reappear. According to PDD, by including only the seriousness of the crime, criminal record, and the likelihood the defendant will reappear, the bill overrides the rules and limits the discretion of courts.

JD/jle