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FISCAL IMPACT REPORT

SPONSOR Rehm/Dow/Lord/Pettigrew **ORIGINAL DATE** 1/26/2022
LAST UPDATED _____ **HJR** 4
SHORT TITLE Denial of Bail, CA **SB** _____
ANALYST Carswell

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Counties: increased detention costs	NFI	Up to \$44,537.0	Up to \$89,074.0	\$133,611.0	Recurring	County General Funds
Secretary of State	Up to \$375.0	NFI	NFI	Up to \$375.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Institute for Social Research (ISR), University of New Mexico

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of District Attorneys (AODA)

Public Defender Department (PDD)

Attorney General's Office (NMAG)

Sentencing Commission (NMSC)

Department of Public Safety (DPS)

No Response Received

New Mexico Counties

SUMMARY

Synopsis of Bill

House Joint Resolution 4 proposes to amend Article II, Section 13 of the New Mexico Constitution to allow the Legislature to set the conditions under which defendants may be detained and denied bail pending trial. HJR4 proposes several additional changes to current constitutional requirements for denial of bail. It would remove the requirement that detention without bail be requested by prosecutors and allow any court to deny bail rather than just a "court of record." This change would give magistrate judges the ability to deny bail in addition to district court judges. Additionally, HJR4 would expand the types of defendants for whom bail

may be denied by removing the constitutional requirement that only defendants charged with felonies may be detained without bail and by permitting detention to ensure a defendant's appearance in court. Currently, the constitution only permits detention without bail prior to conviction when a defendant is found to be dangerous and when no conditions of release can reasonably protect the safety of the community or any individual.

If HJR4 passed, the constitutional amendment it proposes would be submitted to voters for approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

FISCAL IMPLICATIONS

Costs to Counties. HJR4 significantly expands the types of defendants eligible for detention and the basis on which they may be detained. The cost estimates in this analysis are based on the cost of additional detention due to expanding detention eligibility to defendants charged with misdemeanors. The lower end of the cost estimate assumes the constitutional amendments result in no additional detentions while the upper end assumes misdemeanor defendants are detained at the same rate as felony defendants in Bernalillo County, where such data is currently available. The University of New Mexico's (UNM) Institute for Social Research's (ISR) most recent study on pretrial detention in Bernalillo County found 30.4 percent of defendants were detained. Data from the Administrative Office of the Courts (AOC) shows 25.2 thousand new misdemeanor cases were initiated in magistrate courts statewide in FY20. LFC therefore estimates a high-end number of new detainees at 7,663 per year, with a low end of no additional detainees. The true cost is likely to fall somewhere within this range because the state may move to detain fewer defendants charged with misdemeanors than felonies, and judges may grant fewer of those motions.

The marginal cost of detention at the Metropolitan Detention Center and the average time to case disposition for district attorneys statewide were applied to this population to arrive at the cost estimate for county general funds. The FY23 estimate is prorated for six months to account for the fact that a general election vote on the constitutional amendment would occur approximately halfway through the fiscal year.

Other Operational Costs. Under Section 1-16-4 NMSA 1978, the Secretary of State (SoS) is required to print the full text of each proposed constitutional amendment, in both Spanish and English. The cost of producing the voter guide will change depending on the number and length of the constitutional amendments passed and the number of registered voters but is estimated at \$25 thousand.

SoS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in one newspaper in every county in the state. In 2020, the SoS spend \$351,015 for the required newspaper publications, however the cost is dependent upon the number and length of the constitutional amendments that are passed.

AOC notes the New Mexico Supreme Court would have to consider and adopt new rules to allow magistrate courts to make detention decisions if the constitutional amendments were approved. The time and resources required to complete such a rulemaking could not be quantified at this time. AOC further explains resources would need to shift to magistrate courts

to hold detention hearings and make findings from those hearings. Magistrate court decisions would be subject to ‘de novo’ review in district court, which currently has exclusive jurisdiction over detention hearings and decisions. Therefore, the changes may not reduce the workload of district court, but rather increase the work of the courts overall by introducing an additional layer of review. The total number of detention hearings is also likely to increase due to the greater number of defendants who would be eligible for detention pending trial, which could increase the workload of the courts, prosecutors, and public defenders.

PDD states HJR4 could enable additional changes to pretrial detention, such as proposed 2022 legislation to make it easier to detain defendants prior to conviction. Any such legislation enacted after the constitutional amendment proposed in HJR4 could further increase the number of detainees and costs to county and state government.

SIGNIFICANT ISSUES

Public Safety Outcomes of Pretrial Release. Currently, pretrial defendants are relatively small contributors to reported crime in Bernalillo County, where data is available on pretrial outcomes over the last four years. According to data provided by UNM’s ISR to LFC on all felony cases in Bernalillo County over a four-year period, defendants on pretrial release accounted for 5 percent of all violent felony arrests.

Additionally, in a December 2021 study, ISR found that 95 percent of defendants released pending trial in Bernalillo County did not pick up new violent charges while on pretrial release. Judges released 69.6 percent of defendants and detained 30.4 percent. In absolute numbers, defendants in 15,134 cases had at least some exposure in the community while awaiting trial over a four-year period. Of that group, 81.9 percent were not charged with additional crimes while on pretrial release, 13.1 percent (1,983) were arrested on a new non-violent charge, and 5 percent (757) were arrested on a new violent charge. Nearly 80 percent of defendants appeared for all court dates. While more crimes than arrests could be occurring, the outcomes among pretrial defendants in Bernalillo County have remained consistent across several ISR studies.

The most common new charges defendants picked up were property crimes (38 percent), followed by drug crimes (24 percent), and assault and battery (22 percent). Serious violent charges, such as robbery, sex offenses, or homicide each represented 1 percent or less of the new criminal activity in the pretrial release population. The defendants were charged with seven homicides that occurred during pretrial release over the four-year period.

Although pretrial detention prevents new criminal activity prior to case disposition through a short-run incapacitation effect, there is evidence that pretrial detention also has a criminogenic effect, increasing new crime after case disposition. A 2018 LFC program evaluation found that likelihood of a new felony arrest rose with length of initial jail stay.

Legal and Civil Liberties Issues. AOC points out HJR4 may conflict with other rights provided by the state and federal constitutions because the right to bail is tied to due process, equal protection, and the presumption of innocence. Such conflicts are likely to arise from the portion of the proposed amendment that would allow for detention without bail to ensure a defendant’s appearance in court, according to AOC.

PDD notes the resolution, if approved by voters, would result in “broad incarceration of presumptively innocent defendants with no provable benefit to public safety,” as well as

detention of individuals who are not ultimately convicted on the charges for which they were detained. PDD's submitted analysis of HJR4 included a summary of internal agency data from Albuquerque showing that of 4,171 detention cases over three years that were considered resolved, 19.3 percent were not indicted within a year, 58.7 percent ended without a state conviction, and 14.6 percent ended with a conviction and a prison sentence.

Agency analysis provided by NMSC stated HJR4 "would make the denial of bail under the constitution far more readily available than at any time in state history."

RELATIONSHIP

Relates to House Bill 5 and House Bill 27, both of which create rebuttable presumptions against pretrial release based on defendants' charges and criminal histories. As PDD points out, HJR4 could allow such changes, which the agency believes could violate current constitutional provisions.

CC/acv