

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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:
Original **Amendment**
Correction **Substitute**

Date 01/17/2024
Bill No: HB44

Sponsor: William Rehm
Short Title: Pretrial Detention Presumptions

Agency Name and Code Number: 770 - NMCD
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 44 relates to pretrial detention. Establishes a presumption that the prosecution has proven by clear and convincing evidence that a defendant is dangerous and no release conditions will reasonably protect the safety of any other person or the community. Allows for the presumption to be rebutted by defendant in an adversarial hearing.

In a hearing that is initiated by a prosecuting authority pursuant to Art. 2, Sec. 13 of the State Constitution,* a magistrate, metropolitan or district court shall do the following:

- first make a probable cause determination as provided by Supreme Court Rule;
- once probable cause has been determined, a pretrial hearing shall be held in district court and the prosecuting authority shall present relevant evidence demonstrating that the defendant (1) committed a dangerous felony offense; (2) is a danger to any other person or to the community if released; and (3) no release conditions will reasonably protect any other person or the community.

The "introduction of [these] materials" shall create a rebuttable presumption that the prosecuting attorney has proven by clear and convincing evidence that the defendant is a danger to any other person or to the community if released and that no release conditions will reasonably protect them. Once the presumption is successfully established, the burden of proving that the defendant does not pose such a danger rests with the defendant. After hearing from both parties, the court shall determine whether the defendant has been successful in rebutting the presumption and, in so doing, shall consider relevant factors established by Supreme Court Rule.

For purposes of this section, the term "dangerous felony offense" is defined as established in various sections of the Criminal Code for the following crimes:

- 1) First degree murder
- 2) Second degree murder
- 3) Voluntary manslaughter
- 4) Third degree aggravated battery against a household member
- 5) First degree kidnapping
- 6) First and second degree criminal sexual penetration

- 7) Second and third degree criminal sexual contact of a minor
- 8) First and second degree robbery
- 9) Second degree aggravated arson
- 10) Shooting at a dwelling or occupied building
- 11) Shooting at or from a motor vehicle
- 12) Aggravated battery upon a peace officer
- 13) Assault with intent to commit a violent felony upon a peace officer
- 14) Aggravated assault upon a peace officer
- 15) Felony committed while defendant brandished or discharged a firearm

Any of the following offenses when the nature of the offense and the resulting harm are such that the court deems the crime to be a dangerous offense:

- 16) Involuntary manslaughter (30-2-3)
- 17) Fourth degree aggravated assault (30-2-3)
- 18) Third degree assault with intent to commit a violent felony (30-3-3)
- 19) Fourth degree aggravated assault against a household member (30-3-13)
- 20) Third degree assault against a household member with intent to commit a violent felony (30-3-14)
- 21) Third and fourth degree aggravated stalking (30-3A-3.1)
- 22) Second degree kidnapping (30-4-1)
- 23) Second degree abandonment of a child (30-6-1)
- 24) First, second and third degree abuse of a child (30-6-1)
- 25) Third degree dangerous use of explosives (30-7-5)
- 26) Third and fourth degree criminal sexual penetration (30-9-11)
- 27) Fourth degree criminal sexual contact of a minor (30-9-13)
- 28) Third degree robbery (30-16-2)
- 29) Third degree homicide by vehicle or great bodily harm by vehicle (6-8-101)
- 30) Battery upon a peace officer (30-22-24)

* Art. 2, Sec. 13 of the Constitution establishes the right to post bond for release before conviction; prohibits excessive bail, excessive fines or cruel and unusual punishment; and prohibits detention simply because of a person's financial inability to post a money or property bond. Makes exceptions for capital offenses where the proof is evident or the presumption great that no release conditions will protect the safety of a person or community, or where a person is detained on grounds of dangerousness or being a flight risk, subject to a hearing where proof is established by the prosecutor .

FISCAL IMPLICATIONS

The implementation of these proposed changes is unlikely to have a fiscal impact on the department.

SIGNIFICANT ISSUES

None for the Corrections Department.

PERFORMANCE IMPLICATIONS

None for the Corrections Department.

ADMINISTRATIVE IMPLICATIONS

None for the Corrections Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None for the Corrections Department.

TECHNICAL ISSUES

None for the Corrections Department.

OTHER SUBSTANTIVE ISSUES

None for the Corrections Department.

ALTERNATIVES

None proposed by the Corrections Department.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed by the Corrections Department.