

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

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 1/16/2024
Bill No: HJR 03

Sponsor: William "Bill" Rehm and
Randall T. Pettigrew
Short Title: Requirements for the Denial of
Bail, CA

Agency Name and Code Number: AOC 218
Person Writing Jason L. Clack
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to HB 44
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Joint Resolution 3 proposes to submit for approval in the next general election or at any special election prior to that date that may be called for that purpose, an amendment to Article 2, Section 13 of the New Mexico Constitution. The amendment would add paragraph enumerations to the constitutional provision.

- Under proposed paragraph A, the amendment would authorize the legislature to prohibit bail pursuant to statute.
- The resolution would also amend paragraph C to remove the requirement for bail to be denied only by a court of record and the requirement for the prosecutor to request a denial of bail. It would also remove the limitation that only those charged with a felony could be denied bail.
- The amendment to proposed paragraph C would allow the court to make the finding necessary for bail denial on its own initiative, and would add language allowing bail to be denied due to risk of failure to appear as required.
- Finally, the resolution would amend proposed paragraph D to replace the existing clause, “not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail” with the term “bailable,” and replace “a money or property bond” with “sufficient sureties.”
- The second sentence of the paragraph replaces “defendant” with “person,” strikes the clause “neither a danger nor a flight risk” with “bailable, replaces “money or property bond” with “sufficient sureties,” and strikes the existing clause “from the requirement to post bond” at the end of the sentence.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. The current Rules of Criminal Procedure for the New Mexico state courts give the district courts exclusive jurisdiction over decisions denying the right to bail. If this constitutional amendment is adopted, the Supreme Court would have to consider and adopt new procedural rules to allow courts of limited jurisdiction to make these decisions pursuant to the amended constitutional provision. This rule making process would take time and resources for the Court, which not able to be quantified at this time.

This amendment would allow courts of non-record to make decisions denying bail. This would require a shifting of resources to those courts, to hold the necessary hearings and make the

necessary findings pursuant to the amended constitutional provision. While this may initially reduce workloads in the district courts, which now have exclusive authority over those decisions, it would not completely eliminate the burden on those courts, as these decisions by the lower courts would be subject to de novo review, as discussed further below. Therefore, this has the potential to increase workloads in the courts overall, by adding another layer of review for these decisions.

Removing the limitation that only people charged with felony offenses could be denied bail would also create the potential for a significant increase in denial of bail hearings. Since any criminal defendant could potentially be subject to denial of bail under the proposed revisions, many misdemeanor defendants could become the subject of these hearings. This would also increase the potential for appeals to the district court (which are still given precedent over other matters), thus further increasing the potential fiscal impact on the courts.

SIGNIFICANT ISSUES

This first significant issue, as mentioned above, is that this proposal would give courts of non-record the ability to deny bail. Decisions from these courts would be appealable, and the defendant would have the right to a de novo hearing in the district court. See § 35-1-1 (“The magistrate court is not a court of record.”); § 35-13-2(A) (“Appeals from the magistrate courts shall be tried de novo in the district court.”); NMSA 1978, § 35-15-10 (1959) (“All trials upon appeals by a defendant from the municipal court to the district court for violations of municipal ordinances shall be de novo . . .”). A de novo review by the district court, would require the district court to conduct the hearing anew. This would undo the burden shifting created by allowing the lower courts to make these decisions. As discussed above, this potential impact on court operations is compounded by the removal of the limitation of this provision to felony defendants.

The right to bail is tied to due process, equal protection, and the presumption of innocence. In order to overcome these other rights afforded to criminal defendants, and deny the right to bail, there must be a compelling interest. Under the current constitutional provision, the compelling interest is the safety of others. This is a well-established compelling interest which has been held to validate laws limiting other rights.

This Resolution proposes to add another compelling interest in the form of ensuring the appearance of the person as required. This is presented as an alternative reason to deny bail, other than to protect the safety of any other person or the community. The denial of bail for someone who is not dangerous, but may otherwise be a risk for not appearing in court could raise significant challenges to this constitutional provision under other rights afforded by the federal and state constitutions.

The purpose of monetary bail is to secure the defendant's appearance in court to submit to court proceedings and the judgment to be imposed by the court. See *State v. Cotton Belt Ins. Co.*, 1981-NMSC-129, 97 N.M. 152, 637 P.2d 834. In fact, monetary bail may only be forfeited if a defendant fails to appear as ordered. See § 31-3-2 NMSA 1978. Therefore, the consideration for setting monetary bail is different from the consideration in setting conditions of release to protect the safety of others and the community. If a person is so dangerous that no conditions can reasonably assure the safety of others, custody does not depend on that person's financial means. The person can commit a new crime and still not be subject to bail forfeiture as long as they return to court. On the other hand, if there is no amount of money that can reasonably assure that

person's appearance before the court or assure community safety, custody does depend on that person's financial means, because a person with vast financial resources would be more capable of securing and sacrificing a significant amount of money by not appearing than would a person of more modest means. This issue with the proposal raises significant equal protection concerns which would be ripe for challenge in the courts. It also goes against the purpose of monetary bail to say that there are situations where there are no sufficient sureties to reasonably assure the defendant's appearance.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. It is unknown if enactment of this bill would impact performance measures as they relate to judicial budgeting.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts if the issues discussed above result in challenges to the validity and/or constitutionality of this law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 44 relates, as it deals with presumptions for pretrial detention and denial of bail.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS