

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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 January 18, 2024

Bill No: HJR 3-280

Sponsor: William "Bill" R. Rehm and Randall Pettigrew
Short Title: REQUIREMENTS FOR DENIAL OF BAIL, CA

Agency Name and Code LOPD 280
Number: _____
Person Writing Nina Lalevic
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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: **HB 44**
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HJR 3 is a joint resolution proposing amendments to Article 2, Section 13 of the New Mexico Constitution. The amendments would expand courts’ ability to hold defendants in detention *without eligibility for bail* while their cases are pending. It does so in five ways:

First, it would remove the constitutional language that limits bail prohibitions to the terms of the constitution itself, instead allowing the Legislature to set terms prohibiting bail eligibility.

Second, it would remove the requirement that bail denial must be requested by prosecutors in a particular case so that the court could deny bail on its own.

Third, it would remove the requirement that such decisions be made by a “court of record,” expanding the ability to deny bail to magistrate judges.

Fourth, it would remove the limitation of bail denial to defendants charged with a felony, permitting detention without bail even in misdemeanor cases.

And finally, HJR 3 would expand the class of persons for whom bail may be denied. Currently, the constitution itself only permits detention without bail if “no release conditions will reasonably protect ... the community.” HJR 9 would also permit detention without bail if “release conditions will not reasonably ensure the appearance of the person,” even if the person is neither a danger nor a true flight risk.

In sum, absent legislation setting limitations in the scope for bail denial, HJR 3 would give courts full discretion to detain anyone without bail to ensure *either* public safety *or* court appearance.

FISCAL IMPLICATIONS

The fiscal impact of this joint resolution alone, even without looking to the proposed legislation in this area, is impossible to determine. By expanding detention to misdemeanants and questionable flight risks, however, would certainly increase the number of defendants against whom the State would *seek* pretrial detention. It would also certainly result in an increase in the number of detention hearings required by the courts and the number of defendants being held pretrial, which would impact resources in the courts and county jails around the state. It would also increase the number of defendants appealing their detention decisions, also placing a further

burden on the appellate courts.

Furthermore, looking at current 2024 legislation such as HB 44, as an example of changes this joint resolution might enable, the potential for huge fiscal implications is palpable. Analyst refers LFC to the fiscal implications analyses for those bills as well.

SIGNIFICANT ISSUES

As noted, this joint resolution would dramatically expand the scope of pretrial detention, authorizing courts to deny bail to someone accused of a misdemeanor or who presents no danger to the community, but may not be deemed reliable enough to appear for hearings (even if not a true flight risk).

It would simultaneously allow the Legislature to set the specific criteria for pretrial detention by authorizing the Legislature to designate certain conditions rendering a defendant ineligible for pre-trial release. This would relieve the State of its current constitutional burden of *proving* dangerousness in order to impose detention without bail. In other words, the State would no longer need to present evidence “that no release conditions will reasonably protect ... the community,” N.M. Const. art. 2, § 13, but could instead rely on the mere fact that charges have been filed (regardless of the underlying factual allegations or even the nature of the charges). A massive increase in the number of defendants held pretrial is assured.

Sweeping detention proposals without individualized public safety assessments are over-inclusive in their effort to capture individuals likely to be a danger to the community. An accused could be detained primarily on the basis of unproven charges (for which the accused would otherwise be presumed innocent), and without considering the factual nature of those charges in a particular case. Consequently, people who are actually innocent of the target charges, with no criminal history, could be held in detention without any opportunity for release while awaiting trial. Pretrial delay could easily result in this person being held for periods well over a year at the county’s not insignificant expense. Even if ultimately found guilty, this resolution would could result in a lengthy period of incarceration even in cases where the judge might not have imposed an incarceration sentence after conviction.

This joint resolution would also remove the requirement that decisions be made by a court of record. This would allow magistrate judges, who are not lawyers, to make these decisions. Because of the procedures inherent to non-record courts, such decisions would then have to be appealed to the district court, *de novo*, requiring a new hearing each time. This would result in considerable additional work for all parties.

As the New Mexico Constitution was amended in 2016, “Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.” N.M. Const. art. II, § 13. Thus, New Mexico voters decided only seven years ago that under the New Mexico Constitution, the State bears the burden of persuading a court that a particular defendant is in fact dangerous.

This resolution proposes to return the issue to the ballot after only seven years despite a lack of any evidence that a change is necessary. Several years ago, the Administrative Office of the Courts attested that the 2016 bail reform was working. *See*

<https://www.abqjournal.com/1395438/top-nm-court-official-bail-reform-is-working.html> (“Artie

Pepin, director of the Administrative Office of the Courts, said University of New Mexico researchers found that 83% of released defendants during a recent nearly two-year period had no new arrests while awaiting trial. And of those arrested, only a small number were accused of committing first-degree felonies that are typically the most violent types of crimes.”). A previous report prepared for the New Mexico Sentencing Commission looked at release rates from July 2017 until June of 2021. The numbers are similar to those quoted above. Approximately 81 percent of released defendants had no new arrests. Of those arrested, only a miniscule percentage were arrested for first or second degree felonies. *See The Public Safety Assessment, Preventive Detention, and Rebuttable Presumptions in Bernalillo County*, prepared for New Mexico Sentencing Commission, December 2021, pp. 13, 16.

According to LOPD internal data for Albuquerque, as of December 31, 2023, 1226 motions to detain were filed and heard last year, of which 57.2% were granted. 242, or 19.7%, were filed on non-violent charges, including 11 motions to detain on a case of simple drug possession. Furthermore, as of December 31, 2023, 6636 detention cases filed from 2017 – 2022 were considered to have resolved. 19.3% were not indicted within the year, and 45.8% ended without a state conviction. Only 16.5% of people on whom the State filed for detention were ultimately sentenced to prison for a conviction on that case.

Keeping in mind that a person charged with a crime is presumed innocent, it is also important to compare pretrial detention numbers with the ultimate outcome of the criminal case. Previous LOPD internal data indicates that 23.8% of defendants detained in Albuquerque between 2017 and 2022 were not ultimately convicted of anything (589 of 2478). An additional 120, or 4.8%, pled down to a misdemeanor offense, possibly just to get out of jail. These numbers do not include defendants who were released or those who were convicted of some lesser felony, including felonies that would not be considered “dangerous” by any measure. Of those convicted, over 30% receive probated sentences because once all the circumstances are known, incarceration is often no longer deemed appropriate.

This proposal would result in the detention of a much wider swath of presumptively innocent defendants with no provable benefit to public safety.

PERFORMANCE IMPLICATIONS

To the extent HJR 9 would require more hearings at short notice, an unknown (but very likely greater) portion of which would be appealed, a concomitant increase in resources for the courts, DAs, LOPD and Corrections, would be required.

ADMINISTRATIVE IMPLICATIONS

None noted

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted

TECHNICAL ISSUES

None noted

OTHER SUBSTANTIVE ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

ALTERNATIVES

None noted

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None noted