

**LFC Requester:**

Austin Davidson

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**Analysis.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** 16JAN2024

**Bill No:** HJR 3

**Sponsor:** William R. Rehm, Randall T. Pettigrew

**Short Title:** Requirements for Denial of Bail, CA

**Agency Name and Code Number:**

790-Department of Public Safety

**Person Writing**

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	NFI	NFI	NFI	NFI		

(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**

House Joint Resolution 3 proposes to amend Article II, Section 13, of the New Mexico Constitution to make several changes to current constitutional requirements for denial of bail. It would remove the requirement that detention without bail be requested by prosecutors, and it would allow any court to deny bail rather than just courts of record. This change would give magistrate judges, in addition to district judges, the ability to deny bail. Additionally, HJR 3 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 HJR 3 were 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 called for that purpose.

**FISCAL IMPLICATIONS**

While DPS does not anticipate a direct fiscal impact regarding this resolution, HJR 3 proposes to significantly expand the types of defendants eligible for detention and the basis on which they may be detained. Thus, there would be a cost to taxpayers and counties associated with the detention of 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. Recent research on pretrial detention in Bernalillo County found 30.4 percent of defendants were detained. According to AOC’s FY20 statistical addendum, 25,206 new misdemeanor cases were initiated in magistrate courts statewide in FY20. The marginal cost of detention at the Metropolitan Detention Center and the average time to case disposition for district attorneys statewide would apply to this population to arrive at the cost estimate for county general funds.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SoS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SoS is also

required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150,000 to \$200,000 depending on the size and number of ballots and if additional ballot stations are needed.

## **SIGNIFICANT ISSUES**

HJR 3 would introduce a significant change to the due process rights of criminal defendants. Presently, pretrial detention motions are adjudicated in courts of record before lawyer-judges. HJR 3 would extend that to New Mexico's Magistrate Courts, where there is no record of proceedings, and the judges are not statutorily required to be a licensed attorney. The combined effects of these two factors create an inapt adjudicatory environment for pretrial detention. Placing this critically important matter in the Magistrate Court context could increase legal error and, correspondingly, litigation and appeals. Because criminal defendants would be entitled to appeal the Magistrate Court Judge's order detaining them, due to the lack of a record of proceedings, most of these matters would likely be appealed to the District Court, duplicating the work and resources on all levels of the judicial system.

Pretrial detention policy seeks to balance the public's interest by not detaining individuals who pose little risk to the community and preventing the release of individuals who will or are likely to commit a serious crime during the pretrial period. This resolution seeks to cast a much wider net with the likely result of more criminal defendants ending up incarcerated pending trial.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HJR 3 is identical to the House Joint Resolution 9 from the 2022 legislative session.

## **TECHNICAL ISSUES**

- It is unclear whether Section C refers to pretrial detention or money bond.
- The language regarding being a flight risk is unnecessary as that could be interpreted to fall under a situation that would not reasonably protect the safety of any other person or the community.
- Section D seems to be confusing pretrial detention and money bond.

## **OTHER SUBSTANTIVE ISSUES**

HJR 3 also restricts bail to only "sufficient sureties" and would likely reduce court revenue in the form of bail payments directly to courts.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

None at this time.