

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 1/19/2024
Bill No: SB 122

Sponsor: Craig Brandt, Mark Moores
Short Rebuttable Presumption
Title: Against Release

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						

(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:

SB 122 amends the Criminal Code to establish that a rebuttable presumption arises when a criminal defendant cannot be safely released pending trial if (1) charged with and facing trial for a major felony offense (listed in the bill); or (2) while pending trial, sentencing, or on probation, or within five years of a prior major felony conviction, the defendant has committed a new major felony. Clarifies that the creation of the presumption does not change the prosecution’s constitutional burden of proof, and establishes the court’s duty to evaluate evidence that the burden has been met.

The rebuttable presumption created in the bill would apply to circumstances that arise under Art. 2, Sec. 13, of the Constitution, which provides that “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. An appeal from an order denying bail shall be given preference over all other matters.”

The bill would establish as a matter of law that the prosecution’s burden to prove “by clear and convincing evidence” that the defendant constitutes a danger can be met by a showing that there is “reasonable cause” to believe:

1. that the defendant committed any of the following felony offenses for which the defendant is currently charged:
 - first degree murder (Sec. 30-2-1)
 - first or second degree felony human trafficking of a child (Sec. 30-52-1)
 - first degree felony child abuse (Sec. 30-6-1)
 - sexual exploitation of a child constituting at least a second degree felony (Sec. 30-6A-3)
 - a serious violent felony offense (Sec. 33-2-34 (L)(4)(a)-(n))
 - a felony offence during which a firearm was brandished (Sec. 31-18-16) or discharged
 - a felony offense during which great bodily hard was inflicted (Sec. 30-1-12) or that caused the death of a person

2. that the defendant committed a new felony offense that prompted the detention hearing:
 - while pending trial or sentencing for an offense listed above
 - while on probation, parole or any other post-conviction supervisions for such an offense
 - within five years of conviction of such an offense.

The bill provides for the following procedure: the prosecuting authority must request a pretrial detention hearing. At the hearing, the court must rule that the presumption applies to the defendant, which appears to require a mere showing of probable cause that the defendant committed the crime charged, and then the court shall evaluate whether the higher burden of proof (clear and convincing evidence) has been satisfied as to the defendant's dangerousness by considering any other available information tending to indicate the defendant poses a threat to the safety of others.

The Fiscal Impact Report for the similar 2023 measure, SB123, recited concerns of the Attorney General's Office, the Administrative Office of the Courts, the Public Defender Department, and the Sentencing Commission that the creation of a rebuttable assumption against pretrial release could violate the constitutional provision cited above, and that, if enacted, litigation regarding its constitutionality should be expected.

In general, the concept of a rebuttable presumption is more commonly seen in civil, not criminal law. According to Black's Law Dictionary, in the law of evidence, a rebuttable presumption is one that may be rebutted by evidence. Otherwise called a "disputable" presumption, it is a species of legal presumption which holds good until disproved. The procedure proposed in the bill does not, however, anticipate presentation of any rebuttal evidence, as the Constitution places the full burden of proof on the prosecutor, in effect creating a presumption of sorts that the defendant should not be held prior to trial. The bill appears to require, but does not so specify, that the prosecutor will shore up the presumption with additional evidence beyond the mere criminal charge, which remains to be proven by evidence at trial.

Applicable to charges first filed against defendants on or after the effective date of the act.

FISCAL IMPLICATIONS

SB122 could have counties looking for additional funds if the number of pretrial holds increase significantly. Currently, the counties have access to an appropriation at DFA for county detention of prisoners. The current fund is \$5.0 million per year, and they are seeking an increase to \$7.5 million according to information posted on the NM Counties website. Assuming that is for the current level of operations, an increase in holds may significantly increase costs to counties. If the counties exhaust this source of funds, they may turn to NMCD for payment and there are minimal funds in the department's budget to reimburse counties.

SIGNIFICANT ISSUES

Pretrial release decisions are made by judges. SB122 primarily impacts the New Mexico Judiciary in proposing changes to how pretrial release decisions are made, and the Corrections Department's mission and operations would not be directly impacted. If and to the extent SB122 results in significant increases or decreases in pretrial detention, this would likely impact counties and jails.

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 for the Corrections Department.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None for the Corrections Department.