

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 19JAN2024

Bill No: SB 122

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

Agency Name and Code 790 Department of Public Safety
Number:
Person Writing KELLY MILLER
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

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

(SEM No. 7) (Almost identical to 2023 SB123; related to 2024 HB44, 2023 HB509) 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 requires a showing of probable cause that the defendant committed the crime charged, and then the court shall evaluate whether the 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 bill also specifies that it is applicable to charges first filed against defendants on or after the effective date of the act.

Notably, this bill is substantively identical to HB 5 from 2022, which then-District Attorney, Raul Torrez and his then-Deputy District Attorney, James Grayson, advocated for and concluded was constitutional.

FISCAL IMPLICATIONS

No fiscal implications to DPS.

SIGNIFICANT ISSUES

No significant issues to DPS.

PERFORMANCE IMPLICATIONS

DPS does believe this change would be positive for public safety, by decreasing the number of violent repeat offenders in the community. This agency regularly deals with and arrests offenders on new charges, while they are still pending one or more other violent crime cases. This bill would not only prevent numerous crimes committed by individuals while on release but would reduce the number of potentially dangerous encounters our officers have to make with those same individuals.

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship or relationship to DPS.

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

No other substantive issues to DPS.

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.

