

LFC Requester:	Felix Chavez
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

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

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.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}*

**Date Prepared:** 30 January 2025 *Check all that apply:*  
**Bill Number:** HB 165 Original  Correction   
 Amendment  Substitute

**Sponsor:** N. Chavez **Agency Name and Code** NM Sentencing Commission -- 354  
**Short Title:** Denial of Bail Hearings & Presumptions **Number:** \_\_\_\_\_  
**Person Writing** Douglas Carver  
**Phone:** 505-239-8362 **Email** dhmcarver@unm.edu

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(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:

HB 165 creates a rebuttable presumption that defendants have to overcome to prove that they are not a danger to any other person or to the community if released and that no release conditions will reasonably protect any other person or the community.

Under the bill, when there is a hearing by a prosecutor pursuant to the constitutional provisions regarding bail, a Magistrate Court, Metropolitan Court or District Court shall first make a probable cause determination as provided for by Supreme Court rule.

During a hearing to deny bail for a defendant charged with committing a dangerous felony offense, the prosecuting authority may present all available evidence that demonstrates that: (1) the defendant is a danger to any other person or to the community if released; and (2) no release conditions will reasonably protect any other person or the community. Upon the introduction of the evidence to prove those points, the court shall infer that the evidence is true and presume denial of bail is necessary.

After both parties present their evidence, the court shall determine whether the inferences and presumption supporting denial of bail were overcome. If the inferences and presumption were not overcome, the court shall adopt them as findings and issue an order in accordance with supreme court rule.

There is a long list of crimes that are defined as a "dangerous felony offense". This list is similar to, but not identical to, the list of crimes considered as a "serious violent offense" in the Earned Meritorious Deductions statute, Section 33-2-34(L)(4) NMSA 1978, including a list of crimes that the court can make a determination that they qualify as a "dangerous felony offense", "when the nature of the offense and the resulting harm are such that the court judges the crime to be a dangerous offense for the purpose of this section." There are 15 crimes listed that are automatically considered a "dangerous felony offense", and a further list of 15 crimes that fall under the optional category.

HB 165 has an emergency clause.

#### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

#### **SIGNIFICANT ISSUES**

The presumptions enumerated in HB 165 seem to be in tension with the language of Art. 2, Sec. 13 of the New Mexico Constitution, which states simply, “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.” The New Mexico Constitution does not contemplate that defendants charged with certain crimes or appearing before a court in certain circumstances are presumed a flight risk or a danger to the community. A rebuttable presumption shifts the burden of proof. As such, HB 165 runs afoul of the present constitutional provisions on pretrial release.

A number of reports have been published in recent years on pretrial release in the state. The New Mexico Statistical Analysis Center (NMSAC) released its report “Bail Reform: Motions for Pretrial Detention and their Outcomes” in August 2021 (available here: <http://isr.unm.edu/reports/2021/bail-reform-motions-for-pretrial-detention-and-their-outcomes.pdf>). The Center for Applied Research and Analysis (CARA) at the University of New Mexico published “The Public Safety Assessment, Preventive Detention, and Rebuttable Presumptions in Bernalillo County” in December 2021 (available here: <https://isr.unm.edu/reports/2021/the-public-safety-assessment-preventive-detention-and-rebuttable-presumptions-in-bernalillo-county.pdf>); CARA also published a Report in Brief for that report, available here: <https://isr.unm.edu/reports/2021/the-public-safety-assessment-preventive-detention,-and-rebuttable-presumptions-in-bernalillo-county-report-in-brief>).

In September 2022, NMSAC released its report “Impact of Bail Reform in Six New Mexico Counties” (available here: <http://isr.unm.edu/reports/2022/impact-of-bail-reform-in-six-new-mexico-counties.pdf>). The purpose of that study was to analyze the impact of bail reform. The report concluded:

Bail reform has successfully decreased the number of people held pretrial and has shortened pretrial detention time overall. The decrease in days detained overall is driven largely by a decrease in time spent detained among those who spend some of, but not the entire, pretrial period in jail. It has also successfully decreased the frequency with which bond is set, both for all cases set at any point during the life of the court case and during the pretrial period among new felony cases. When bonds are set, they are lower on average than they were pre-reform. Finally, days to disposition decreased with bail reform, indicating that pretrial court efficiency may be improving overall, though days to disposition were slightly longer for those detained for the entire pretrial period after the amendment was implemented. However, the reform has coincided with a small increase in new offenses pretrial, including violent new offenses. We also observed a slightly higher rate of failures to appear following the implementation of bail reform, though the vast majority of individuals successfully pass the pretrial period. This varied, though, by county. (p. 49)

In October 2024, CARA release two reports examining this issue for Bernalillo County, “Bernalillo County Second Judicial District Court Preventive Detention Motion Review” (available here: <https://isr.unm.edu/reports/2024/bernalillo-county-second-judicial-district-court-preventive-detention-motion-review.pdf>), and “Evaluating the Costs and Benefits of Pretrial Detention and Release in Bernalillo County” (available here: <https://isr.unm.edu/reports/2024/evaluating-the-costs-and-benefits-of-pretrial-detention-and-release-in-bernalillo-county.pdf>).

**PERFORMANCE IMPLICATIONS**

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**