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**AGENCY BILL ANALYSIS
2026 REGULAR SESSION**

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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 Jan. 28, 206
Bill No: HB 163-280

Sponsor: Nicole Chavez & Andrea Reeb
Short Title: Denial of Bail for Certain Offenses

Agency Name and Code LOPD-280
Number: _____
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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 Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	--	\$2,693.5	\$2,693.5	\$5,387.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Companion to: HJR 2 Denial of Bail, CA

SECTION III: NARRATIVE

BILL SUMMARY

As context for the synopsis, this analysis initially notes: Article 2, Section 13 of the New Mexico Constitution authorizes judges to detain a felony defendant without bail pending trial “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. Interpreting that constitutional provision, the New Mexico Supreme Court has made it clear that detention has two requirements:

In order to subject a presumed-innocent defendant to pretrial detention, the state is required to prove “by clear and convincing evidence that (1) the defendant poses a future threat to others or the community, and (2) no conditions of release will reasonably protect the safety of another person or the community.”

State v. Mascareno-Haidle, 2022-NMSC-015, ¶ 27, 514 P.3d 454 (quoting *State v. Ferry*, 2018-NMSC-004, ¶ 3, 409 P.3d 918).

Bill Synopsis: Pursuant to Section 2 of the bill, effectiveness of the passage of HB 163 is contingent upon the adoption of a constitutional amendment to Article 2, Section 13, referencing the title of HJR 2, currently filed before the 57th Legislature’s Second Session.

In relevant part, HJR 2 proposes adding language allowing a court to “presume” that the State’s burden of presenting evidence of dangerousness is met if a person is “charged with a felony offense designated by law as a dangerous or violent felony offense,” and allowing the defendant to then “rebut[] the presumption by a preponderance of the evidence.”

HB 163 would “designate[] by law” an enumerated list of felonies that would trigger the presumption described in HJR 2. The bill creates two lists, one list “designated as dangerous or violent felonies,” and a list of offenses that *may* be treated as such “if the court determines that the underlying allegations or resulting harm are of a dangerous or violent nature.”

The first list of conclusively dangerous felonies include first and second-degree murder, voluntary manslaughter, third degree aggravated battery against a household member, first degree kidnapping, first and second-degree criminal sexual penetration, second and third-degree criminal sexual contact of a minor, first and second-degree robbery, second-degree aggravated arson, shooting at a dwelling, shooting at or from a motor vehicle, aggravated battery on a peace officer, assault with intent to commit a violent felony, aggravated assault

on a peace officer, and a catch-all for any “felony that was committed while the defendant brandished or discharged a firearm.”

The optional list of offenses that the district court may designate as violent or dangerous (thus triggering the presumption from HJR 2) include: involuntary manslaughter, fourth degree aggravated assault (against a household member or otherwise), third degree assault with intent to commit a violent felony (against a household member or otherwise), third and fourth degree aggravated stalking, and second degree kidnapping.

FISCAL IMPLICATIONS

The fiscal impact of this bill in conjunction with the joint resolution is difficult to project. It would 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, placing a further burden on the appellate courts in LOPD appellate attorneys.

In Albuquerque alone in 2025, the State filed 1,495 motions for preventative detention, the most yet since LOPD started keeping track in 2017. Of those, 54% were granted. 292, or 19.5%, were filed on non-violent charges, including 3 motions to detain on a case of simple drug possession.

In light of the above evaluation, LOPD estimates conservatively that the combined effect of HJR 2 and HB 163 would result in 2,300 pretrial detention hearings annually in Albuquerque alone, (approximately 1,500 reflecting the 2025 count, plus a conservative estimate of 800 additional hearings). As the defense currently does not need to present *any* evidence other than basic biographical facts about the client, primarily holding the State to *its* burden, the preparation time is almost entirely a new resource burden upon LOPD.

LOPD estimates that preparations for each hearing would require an average of 6 hours of attorney time and 6 1/2 hours of support staff time. Again conservatively estimating that attorneys *currently* spend approximately 2 hours preparing for each hearing with 1.5 hours of support staff assistance, LOPD estimates this bill would *increase* LOPD workload by 4 attorney hours and 5 staff hours per hearing. Estimating 2/3 of the 2,300 hearings per year handled in house, that is 1,541 hearings, which represents an increase of 6,164 attorney hours each year and by 7,705 support staff hours—just in Albuquerque.

6,164 attorney hours at 2,080 working hours per year (40 hours per week, 52 weeks a year) represents 3.0 full-time attorney equivalents. 7,705 support staff hours represents 3.7 full-time staff equivalents. However, a 2,080-hour year does not account for time spent on training, administrative or other tasks, or any leave taken. Realistically, **4 additional attorney FTEs** (a combination of mid-level and upper-level attorneys in light of the felony charges) and **5 additional staff FTEs** would be required to manage the increase in Albuquerque hearings alone.

PD2 level attorneys do not handle felony cases. The agency cost of an LOPD “PD3” mid-level Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas (due to salary differential required to maintain qualified employees). An LOPD “PD4” higher level (non-supervisor) Associate Trial Attorney’s mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be

\$13,212 with start-up costs of \$5,210. Additionally, average agency salary and benefits, plus recurring operational costs (but excluding start-up costs) for investigators is \$107,613.51 and for social workers, \$116,697.78.

LOPD conservatively estimates the passage of HJR 2 would result in recurring costs of \$1.2 million - \$596,252.64 for attorney FTE and \$560,778.23 for core staff **in Albuquerque alone. Conservatively, doubling the cost would cover the remainder of the state's in-house attorney cost.**

In addition to the recurring FTE costs, LOPD will additionally incur an increase in recurring costs to LOPD's contract attorney rates. Of the 2,295 estimated LOPD hearings in Albuquerque, if 1/3 are handled by contractors, that is 759 *additional* hearings in Albuquerque, potentially double that statewide, or 1,518. As a *conservative preliminary estimate*, LOPD estimates the additional preparation and hearing time for detention hearings involving rebuttal will require an additional \$250 per flat fee currently paid for such hearings. The increase to recurring statewide contract expenses from enacting HJR 2 are estimated at \$379,500. However, these costs could grow as LOPD begins a pilot project to transition contract attorneys to hourly rates next fiscal year.

The total recurring increase is estimated at \$2.7 million recurring per fiscal year.

SIGNIFICANT ISSUES

HJR 2 and HB 163 together would simultaneously relieve the State of its current constitutional burden of *proving* dangerousness in order to impose detention without bail. In other words, in many cases the State would no longer need to even 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) to invoke the rebuttable presumption. A massive increase in the number of defendants held pretrial is assured.

This creates an internal logic conflict within Article 2, Section 13 because the provision both establishes a burden of proof for the State and simultaneously *relieves the State of that very burden*. Currently, the State has to establish probable cause of new charges for the charges to go forward. For preventative detention, the State bears the burden to prove – *not just the fact of the charges* – but the fact of dangerousness **and** that conditions of release are inadequate to address the risk. The State presents police reports, criminal history information, and details about the particular manner in which the charges were allegedly committed. Under HJR 2 (and any ensuing statutory changes), the State would present only evidence of probable cause for the felony charges. Because probable cause is an extremely low evidentiary bar, much of the contextual evidence currently presented at pretrial detention hearings would not necessarily be presented.

The rebuttable presumption places the entire evidentiary burden on the defense to address other circumstances ordinarily related to dangerousness and the adequacy of conditions. As discussed below in "Drafting concerns," the nature of the rebuttal is unclear in HJR 2. But assuming a defendant is expected to rebut "dangerousness," the defendant would have to prove a negative without a positive to respond to.

If on the other hand, the defendant is required to prove the *absence* of probable cause of

the charged crime, they are in no position to do so within days of their arrest. The detention hearing occurs at a time in a criminal case when the defense has not yet received “discovery” from the State (i.e., the fruits of the law enforcement investigation) and in most cases has not even seen a police report. Typically, the only document available at the time of a hearing is the arresting officer’s criminal complaint. A criminal complaint is an inherently one-sided account and to rebut any dangerousness inference from the fact of the charges alone, the defense would essentially have to conduct a complete investigation into the criminal allegations themselves, a process that – in preparing for trial – can take months or years.

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 could result in a lengthy period of incarceration even in cases where the judge might not have imposed an incarceration sentence after conviction.

While the State may already rely on the pending charges to establish *dangerousness*, “the State must still prove by clear and convincing evidence, under Article II, Section 13, that ‘no release conditions will reasonably protect the safety of any other person or the community,’” and must provide additional, distinct evidence in order to meet that burden. 2022-NMSC-015, ¶ 31. This bill would remove that second requirement.

Additionally, even if the nature of charges were a reasonable litmus test for dangerousness (which this Analyst disputes below), the “statement of probable cause” relied upon in detention hearings is usually the police officer’s “criminal complaint narrative,” which is based on limited investigation, designed to justify arrest and initial prosecution, and not a determination by a neutral fact-finder. A presumption of dangerousness in such circumstances *reduces* the State’s constitutional burden, even if it does not relieve it. *Cf. Commonwealth v. Talley*, 265 A.3d 485 (Pa. 2021) (holding that state constitutional bail provision requiring that “proof is evident or presumption great” standard to justify bail denial imposed a higher burden than mere probable cause or a “prima facie” showing because it clearly contemplated more than a “potential risk” to the community to deny bail).

Meanwhile, the federal system which employs a narrow set of presumptively dangerous crimes to determine bail (without a corresponding constitutional provision like New Mexico’s) operates with The Federal Speedy Trial Act in mind, which requires that trial be held within 70 days of formal charging to ensure that defendants held without bail do not languish in jail while still presumed innocent.

Charges not accurate predictors of dangerousness

LOPD urges that no criminal charge should serve as presumptive proof of preventative detention. The first reason for this is the presumption of innocence. Many cases start with the highest possible charges, and through further investigation and challenging witness credibility, may well turn out to be something far less serious than originally thought. However, as discussed below, targeted data analysis indicates that the pending charge is actually a very *unreliable*

indicator for a person’s ability to comply with conditions of release resulting in significant “false positives.”

Moreover, the enumerated offenses in HB 163 are sweeping in their scope and do not successfully represent generally violent or dangerous *individuals*.

Many of the enumerated offenses require *threats* of violence, but not the actual *use* of violence. Assault is the classic example of “threats or menacing conduct” that do not involve any physical contact or even attempted physical contact (although some assaults may involve attempted battery, which is why individualized assessments rather than sweeping categorical presumptions are necessary). Armed robbery is a particularly dangerous form of assault. It is the use of a *threat* of violence to steal from someone, where a weapon is used. However, almost any object can be considered a deadly weapon, not all armed robberies involve physical harm.

Similarly, third-degree aggravated battery (whether the general version, against a household member, or against a peace officer) does not inherently require injury at all, as the deadly weapon alternative carries no such requirement. Particularly because the term “deadly weapon” can include innocuous objects or include cars (aggravated battery includes a minor vehicle collision), treating all third-degree batteries the same precludes the type of case-by-case decision our constitution and precedent currently require.

Even homicide charges should not trigger a presumption. All homicides involve the death of a human being. Nevertheless, within “homicide,” there is essentially a four-tier structure for culpability, which is premised on the intentions of the actor, and the relative sentences reflect a societal recognition that not all deaths are murder.

While voluntary manslaughter involves intentional conduct, it is defined by the existence of “provocation,” which is what makes it different from “murder.” In other words, it is commonly understood that a person who is not necessarily or otherwise inclined to violence, acted violently because the victim put them into a highly provoking situation. Thus, this offense does not evidence a person’s “proclivity for violence.”

Even more troubling, *involuntary* manslaughter essentially constitutes death resulting from criminal negligence. Negligent behavior – while it can be dangerous and may warrant criminal punishment – does not indicate heedlessly violent behavior, nor does it evidence a person’s “violent nature” or future dangerousness.

Similarly, injuries from car crashes are not intentional acts falling within the scope of “violent” behavior that might justify preventative detention. These crimes fall under the scope of recklessness. While a particular case may justify detention under the circumstances, these offenses do not *inherently* coincide with a violent nature or proclivity for violence.

Current dangerousness evaluations are based on many circumstances, beyond just the current charges for which a person is presumed innocent, investigation is ongoing, and evidence is scarce. These assessments have proven quite effective at detaining the right people. An August 2021 study by UNM’s Center for Applied Research and Analysis, Institute for Social Research¹ shows that the vast majority of people who should be held are, and that people who are not detained largely do not commit new crimes (only 14%), much less violent crimes (only 5%). In

¹ ISR, *Bail Reform: Motions for Pretrial Detention and their Outcomes* (Aug. 2021).

fact, most violations are of technical conditions of release, which can and often do result in detention thereafter. Proponents of HB 5 during the 2022 session asserted that the 14% and 5% numbers are underinclusive because they only account for people who are “caught” committing crimes on pretrial release, but the existence of any other “new crimes” by people on release is *unknown* and cannot be the basis for policy-making. Nonetheless, it is likely to be consistent with the overall trend of being only a fraction of the overall crimes committed and not a significant percentage or driver of the crime rate.

This proposal would create a rebuttable presumption that the prosecution has proven that a person is dangerous and that there are no conditions that will reasonably protect the safety of any person or the community based on a broad category of charges, without any evidence that any of these charges are by themselves reliable predictors of a defendant’s future dangerousness. The presumption would thus apply to a wide variety of defendants, including many who are in fact not violent.

Under HJR 2 and HB 163, an enormous number of *presumptively innocent* defendants would be detained despite the fact that they are not *actually* dangerous, merely because of the nature of unproven allegations against them. Relying on the presumption will lead to a huge number of “false positives”; i.e., non-dangerous defendants being held pending trial unnecessarily.

Tellingly, pretrial detention is *already* over-inclusive. According to LOPD internal data for Albuquerque, as of December 31, 2025, 9,588 detention cases were filed in Albuquerque from 2017 to 2024 and 4,810 (50.2%) of those were granted. 542 of those, or 11.3%, were not indicted within the 10 days allowed by rule to continue detention. 9,330 detention cases have “resolved,” meaning a final outcome is known. Of those resolved cases, 17.6% were not indicted within the year, and 42.9% ended without a state conviction. Only 17.8% of people on whom the State filed for detention were ultimately sentenced to prison for a conviction on that case.

Formal studies also show that charges are not a good predictor of behavior while released, but risk assessments and judges *are* good predictors.² The December 2021 report estimated a 79% “false positive” rate from presumptions relying on charges alone (based on the criteria used in 2020’s HB 80) and 73% false positive rate based on presumptions for “firearms” charges. It also found that only about 3.5% of first-degree felony crimes are committed by people on pretrial release (13 out of 383 between July 2017 and March 2020), and only a small percentage of those 13 would have fallen within rebuttable presumption criteria from 2020’s HB 80.

Enumerating crimes that carry presumptive detention status will incentivize prosecutors to charge those offenses in order to *get* detention, leading to an increase in overcharging practices. Rebuttable presumptions based on *charges alone* will exacerbate this issue.

PERFORMANCE IMPLICATIONS

HJR 2 and HB 163 would have a dramatic impact on LOPD by requiring defense attorneys to prepare and present rebuttal evidence. Practical challenges notwithstanding, any effort to present rebuttal evidence would require defense investigator, social worker, paralegal,

² See Institute for Social Research & Santa Fe Institute report: *Who would rebuttable presumptions detain?* (Dec. 2021).

and attorney time to prepare a more personalized assessment of the individual defendant, including their ties to the community and potential “mitigation” evidence about their life and circumstances. This is the type of preparation ordinarily reserved for sentencing proceedings and often involves hiring a “mitigation expert.” Frankly, it is completely uncertain the lengths to which defendants will need to go to convince judges not to follow the presumption, particularly when the current allegations may be very serious, despite the continued presumption of innocence.

The unfortunate consequence of a rebuttable presumption approach is that people with the means to immediately hire private counsel and pay for investigator time are more likely to be able to rebut the presumption effectively, returning New Mexico back to where we were under a money bail system and directly undermining the purpose of the 2016 constitutional amendment.

Analyst notes that in New Jersey, often held out as an example of success in the area of rebuttable presumptions, 68% of arrestees are released on either a summons or bail, and the presumption is not at issue. Of the detention motions that are filed, 23% are withdrawn by the prosecutor or dismissed outright by the court and for the remaining 77%, roughly half are granted, and half are denied (comparable to Albuquerque). Overall, only 5.7% of arrestees end up in pretrial detention while facing criminal charges. New Jersey’s only charges involving presumptive dangerousness are murder and crimes carrying life sentences, for all other charges, *release* is presumed. See Glenn A. Crant, J.A.D., *Report to the Governor and Legislature*, (N.J. 2019), available at <https://www.njcourts.gov/courts/assets/criminal/cjrannualreport2019.pdf?c=oIY>.

Analyst notes that lengthy detention in jail while awaiting trial can be persuasive in establishing Speedy Trial violations under the Sixth Amendment as well. Analyst recommends that any rebuttable presumption measure be accompanied by statutory speedy trial guarantees, as it is in the federal system (70 days) and in other states that have adopted presumptions, such as New Jersey, which prohibits detention for more than 180 days.

Finally, increasing the rate of pretrial detention impacts the amount of total time that defendants spend incarcerated upon conviction because people are not entitled to “good time” during their jail stay the way they are when serving a post-conviction sentence in the Department of Corrections. As a result, the amount of “credit” they get for time served prior to trial is less than it would be for the same amount of time served in Corrections.

ADMINISTRATIVE IMPLICATIONS

None noted

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

As a proposed constitutional amendment, this legislation need not be germane under Art. IV, Section 5.

OTHER SUBSTANTIVE ISSUES

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. As noted above, according to LOPD internal data for Albuquerque, as of December 31, 2025, 9,588 detention cases were filed in Albuquerque from 2017 to 2024 and 4,810 (50.2%) of those were granted. 542 of those, or 11.3%, were not indicted within the 10 days allowed by rule to continue detention. 9,330 detention cases have “resolved,” meaning a final outcome is known. Of those resolved cases, 17.6% were not indicted within the year, and 42.9% ended without a state conviction. Only 17.8% of people on whom the State filed for detention were ultimately sentenced to prison for a conviction on that case.

ALTERNATIVES

Continued refinement of the current system, incorporating data as it becomes available. *See* SF New Mexican, Editorial, *Improve, don't toss out, New Mexico's bail reform* (Jan. 20, 2023), available at https://www.santafenewmexican.com/opinion/editorials/improve-dont-toss-out-new-mexicos-bail-reform/article_2bbd80b2-98fc-11ed-a98a-e7b4ce0534d3.html

Judicial training to ensure best practices in applying current constitutional and Court Rule requirements.

Funding and training, expansion of effective pretrial supervision programs to ensure compliance with conditions of release.

Prioritizing the successful prosecution of suspects to reinforce the integrity of the criminal legal system and increase deterrence.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. The State will be held to its constitutional burden.

AMENDMENTS

None.