

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	-	\$789.8	\$789.8	\$1,579.61	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HJR 2; HB 163

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).

Synopsis of SJR 6 :

SJR 6 blends legislative proposals from 2025’s HJR 9 (allowing detention based on flight risk), and HJR 14 (removing State’s burden to prove detention is necessary by clear and convincing evidence).

SJR 6 would amend Article 2, Section 13 of the New Mexico Constitution. It would remove the specific burden of proof on the State to *prove* “by clear and convincing evidence that no release conditions will reasonably protect” public safety, instead only requiring the State “prove that the person *poses an unreasonable risk to the safety of any other person or the community,*” and adds in the alternative “or that the person is an unreasonable flight risk.” Subsequent amendments in the bill merely effectuate these described changes.

FISCAL IMPLICATIONS

The fiscal impact of this joint resolution is difficult to project. Reducing the State’s burden of proof, removing consideration of conditions of release that may offset risk, and expanding detention to flight risks, however, would certainly increase the number of defendants against whom the State would *seek* pretrial detention. It would also 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 contrast to other proposals creating rebuttable presumptions of detention based on charges alone, this proposal would not presume the ultimate judicial ruling. However, expansion of eligibility for detention will at a minimum require more hearings, and is sure to increase the number of detention motions granted by the courts. LOPD estimates conservatively that SJR 6 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).

LOPD attorneys *currently* spend approximately 2 hours preparing for each hearing with 1.5 hours of support staff assistance. If an additional 800 pretrial detention motions were held per year as a result of this bill, LOPD would spend an additional, 2,800 hours preparing for these hearings.

1,600 additional attorney hours at 2,080 working hours per year (40 hours per week, 52 weeks a year) represents 0.8 full-time attorney equivalents. 1,200 support staff hours represents .6 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, **1-2 additional attorney FTEs** (a combination of mid-level and upper-level attorneys in light of the felony charges) and **1 additional staff FTE** 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 \$820,000 - \$298,000 for 2 attorney FTE and \$112,000 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 \$789.8 thousand recurring per fiscal year.

SIGNIFICANT ISSUES

SJR 6 would simultaneously relieve the State of its current constitutional burden of *proving* dangerousness in order to impose detention without bail. Furthermore, even when “risk” to public safety is fairly established, under SJR 6, the State would no longer need to present *further* evidence “that no release conditions will reasonably protect ... the community,” N.M. Const. art. 2, § 13. A massive increase in the number of defendants held pretrial is assured. Currently, the State bears the burden to prove the fact of dangerousness **and** that conditions of release are inadequate to address the risk.

Moreover, The addition of the “flight risk” alternative also expands the scope of the net capturing presumptively innocent defendants in jail awaiting trial. While courts certainly have an interest in assurance a defendant faces their charges, defendants are presumptively innocent and the significant deprivation of liberty and collateral consequences of lost jobs, apartments, children, and endless other impacts that incarceration carries, should be limited to ensuring public safety. Current law does not permit pretrial detention solely on the basis of flight risk, although failure to appear can be a basis for revoking conditions of release once granted. If a person fails to appear, they will be arrested and detained. It need not be done preemptively.

Allowing for independent reliance on flight risk *without* dangerousness will disparately impact unhoused defendants and those who lack reliable internet access, transportation, and other resources that aid in attending court hearings. Many indigent defendants miss court due to issues with scheduling, jobs that do not grant time off, and transportation challenges. LOPD urges that any reliance of “failure to appear” history to establish “flight risk” would be inappropriate and increase the risk of undue pretrial detention.

Sweeping detention proposals are over-inclusive in their effort to capture individuals likely to be a danger to the community. 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.

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 – without considering conditions of release that might protect the community – are not a good predictor of behavior while released, but risk

assessments and judges *are* good predictors.¹ 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.

PERFORMANCE IMPLICATIONS

Analyst notes that lengthy detention in jail while awaiting trial can be persuasive in establishing Speedy Trial violations under the Sixth Amendment. 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.

¹ See Institute for Social Research & Santa Fe Institute report: *Who would rebuttable presumptions detain?* (Dec. 2021).

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.