

LFC Requester:

Henry Jacobs

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/5/26

Check all that apply:

Bill Number: SJR6

Original Correction
Amendment Substitute

Sponsor: Sen. Joseph Cervantes

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: DENIAL OF BAIL, CA

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Senate Joint Resolution 6 (SJR 6) proposes to amend Article II, Section 13 (Sec. 13) of the New Mexico Constitution to allow a court to deny bail for a person charged with a felony if the person poses an unreasonable risk to the safety of any other person or the community or if the person is an unreasonable flight risk.

Section 1. A. amends the first paragraph of Sec. 13 and makes it its own subsection and changes the phrase, “is specifically prohibited” to “may be denied as provided” as related to bail. Section 1.B. incorporates the last sentence of the first paragraph of Sec. 13 making it its own subsection. Section 1.C. amends the second paragraph of Sec. 13 making it its own subsection and amends the term “defendant” to “person” (this change is consistent throughout SJR 6), removes “by clear and convincing evidence that no release conditions will reasonably protect”, and adds “that a person poses an unreasonable flight risk” and “or that the person is an unreasonable flight risk” to that subsection. Section 1.D. amends the third paragraph of Sec. 13 making it its own subsection and amends the phrase, “detainable on grounds of dangerousness or a” to “an unreasonable safety risk or unreasonable [flight risk]”, adds “an unreasonable safety risk” and “unreasonable [flight risk]”.

Section 2 states that the amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

FISCAL IMPLICATIONS

None for the NMDOJ.

SIGNIFICANT ISSUES

In Section 1. A., removing the language as it relates to bail from, “is specifically prohibited” to adding “may be denied as provided” is consistent with the phrase, “Bail may be denied by a court of record” in the first line of paragraph two of Sec. 13 and comports with Sec. 13 as it is currently written insofar as nothing in Sec. 13, nor in the proposed amendments mandates specific prohibition of bail.

The substitution of the term “defendant” for “person” is consistent with the term “All persons

shall” (emphasis added) in the first line of Sec. 13 and consistent with language designating individuals who are alleged to have committed felony crimes as “persons” rather than “defendants” unless and until formal felony charges are brought against that person by information filed by the prosecution or grand jury indictment (See Rule 5-201, NMRA). Typically, an information or indictment is not filed at the time of arrest or pretrial detention hearing. The change in designation conforms with New Mexico Rules of Criminal Procedure.

The most significant changes that SJR 6 proposes are the removal of the “clear and convincing” standard of proof required by the prosecution as currently mandated by Sec. 13 to a “reasonableness standard” as indicated in Section 1.C. and the mandated second finding that “no release conditions will reasonably protect [the safety of the community]”. The burden of proof would remain on the prosecuting authority, but the standard of proof would be dictated by due process due to the removal of an express requirement of clear and convincing proof. The United States Supreme Court upheld the constitutionality of the federal Bail Reform Act of 1984 due in part to its requirement of clear and convincing proof. *United States v. Salerno*, 481 U.S. 739, 750-51 (1987).

This amendment would clarify that an unreasonable safety risk is sufficient to support pretrial detention. The current language was “modeled in large part on federal statutes.” *See State ex rel. Torrez v. Whitaker*, 2018-NMSC-005, ¶ 94. Although federal law refers to proof that no release conditions can reasonably protect the safety of the community, the Supreme Court has said that this standard means “that the ‘arrestee presents an identifiable and articulable threat to an individual or the community,’” *Foucha v. Louisiana*, 504 U.S. 71, 81 (1992) (quoting *Salerno*, 481 U.S. at 751), thereby equating dangerousness and the ability of conditions of release to protect the community. New Mexico, however, interpreted the same language to require proof of *both* dangerousness and an inability of conditions of release to protect the safety of the community, *See State v. Mascareno-Haidle*, 2022-NMSC-015, ¶ 31, as if they are two different things. This amendment would allow a court to determine whether a person poses an unreasonable risk to the safety of the community or determine whether a person presents an unreasonable flight risk, and the inquiry would end there. It would be in the court’s discretion to address the unreasonable safety risk through pretrial detention or conditions of release. A court would no longer be required to determine whether there are release conditions that would reasonably protect the safety of the community.

The addition of “flight risk” adds an alternative ground for detention that was not previously explicitly included in factors for the courts to consider. All other factors for a court’s consideration relevant to the dangerousness of any person that are enumerated in 5-409(F)(6) NMRA would remain the same. (See Rule 5-409 (F)(6) NMRA, See also *State v. Anderson*, 2023-NMSC-019, Citing, *Mascareno-Haidle* at ¶ 36, (“[C]ontrolling precedent from this Court ... makes clear that pretrial detention or release decisions cannot be made to turn on any single factor, be it the nature and circumstances of the charged offense(s) or otherwise.”))

PERFORMANCE IMPLICATIONS

Enacting this legislation would impact the way prosecutors at the NMDOJ litigate detention hearings.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR2:

House Joint Resolution 2 (HJR2) also proposes to amend Article II, Section 13 of the New Mexico Constitution. HJR2, similar to SJR6, adds “flight risk” as an issue to be addressed by the district court in determining whether to deny bail. HJR2 differs from SJR6 in that HJR2 creates a rebuttable presumption of detention for certain, enumerated crimes. HJR2 makes explicit the standard of evidentiary proof for this determination as preponderance of the evidence.

HB163 is the companion Bill to HJR2 which lists the enumerated crimes for which detention would be presumed.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

SJR6, if adopted, would require the courts to amend Rule 5-409 NMRA, which reflects the current language and standard of Article II, Section 13. It would also impact existing New Mexico case law that discusses and interprets Article II, Section 13 as it is currently written.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.