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FISCAL IMPACT REPORT

BILL NUMBER: Senate Joint Resolution 6

SHORT TITLE: Denial of Bail, CA

SPONSOR: Cervantes

LAST ORIGINAL
UPDATE: _____ **DATE:** 02/12/26 **ANALYST:** Jacobs

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Election Costs	No fiscal impact	\$35.0 to \$50.0	No fiscal impact	\$35.0 to \$50.0	Nonrecurring	General Fund
Enactment Costs	No fiscal impact	See "Fiscal Implications"	See "Fiscal Implications"	See "Fiscal Implications"	Recurring	General Fund
LOPD	No fiscal impact	At least \$789.8	At least \$789.8	At least \$1,579.6	Recurring	General Fund
Total	No fiscal impact	At least \$824.8	At least \$789.8	At least \$1,614.6	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with House Joint Resolution 2 and relates to House Bill 163

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

- Administrative Office of the Courts
- Administrative Office of the District Attorneys
- New Mexico Corrections Department
- New Mexico Sentencing Commission
- Law Offices of the Public Defender
- Secretary of State

Agency or Agencies That Were Asked for Analysis but did not Respond

- New Mexico Attorney General

SUMMARY

Synopsis of Senate Joint Resolution 6

Senate Joint Resolution 6 (SJR6) proposes to amend Article II, Section 13, of the Constitution of New Mexico to modify criteria for bail pending trial. Individuals charged with a felony could be denied bail if a prosecuting authority proves the person poses an unreasonable risk to the community or is an unreasonable flight risk. The amendment, if approved by voters, would reduce evidentiary standards for detention pending trial by striking the provision that the state

prove the inadequacy of release “by clear and convincing evidence.” It would also strike the line noting situations in which bail “is specifically prohibited” and replaces it with “may be denied as provided” by the section.

The joint resolution provides the amendment be put before the voters at the next general election (November 2026) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$35 thousand to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

Should this proposed constitutional amendment be approved by voters, there would be widespread albeit uneven costs across the New Mexico judiciary.

The lower evidentiary bar for prosecutors would reduce their burden to compile evidence before a pretrial hearing. Without a “clear and convincing” standard, the administrative burden for district attorney offices, specifically their intake units, could be reduced. The Administrative Office of the District Attorneys (AODA) does not report any significant fiscal impacts should the bill pass.

The Law Offices of the Public Defender (LOPD) projects an increase in the number of defendants against whom the state would seek pretrial detention. The agency reports there were approximately 1,500 pretrial detention hearings in Albuquerque alone for 2025, with 19.5 percent of the detention motions for nonviolent charges and a detention rate of 54 percent. LOPD conservatively estimates SJR6 would result in at least 800 additional hearings in the city alone. To absorb this workload, LOPD says its Albuquerque office would require one or two additional felony-level attorneys and one additional support staff. The agency also anticipates higher expenses for contract attorneys should SJR6 pass. About one-third of hearings are handled by contractors, and without the administrative infrastructure of an LOPD office, the increased preparation and litigation demands could raise flat-fee payments by an estimated \$250 per hearing. The agency projects a minimum fiscal impact of \$789.8 thousand annually.

The impact on the courts is not quantified but is likely to be substantial.

Although the Corrections Department did not report a significant fiscal impact, SJR6 would likely increase the number of defendants held pending trial. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center from 2024.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) notes the additions regarding pretrial flight risk may be redundant. AOC provides district courts with a public safety assessment (PSA) and a background investigation report (BIR) for every pretrial-eligible defendant. The PSA explicitly incorporates a defendant’s risk of arrest and failure to appear in its analysis.

AOC provides the following on the prosecutor’s burden of proof:

SJR6 removes the “clear and convincing evidence” standard but does [not] state what standard the prosecutor must meet when the prosecutor “proves” there is an “unreasonable risk” of danger to the public or flight before trial. Litigants can be expected to argue for a range of options, but the most common alternative to the clear and convincing evidence standard in this context is the preponderance of evidence standard. Clear and convincing evidence “is something stronger than a mere ‘preponderance’ and yet something less than ‘beyond a reasonable doubt.’ For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder’s mind is left with an abiding conviction that the evidence is true.” In re Valdez, 1975-NMSC-050, para. 20 ..., the preponderance of evidence standard imposes a lesser burden of proof, requiring only proof that the asserted proposition or fact is more likely than not true.

LOPD reports the following concerns with the provisions on a defendant’s failure to appear:

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.

New Mexico Sentencing Commission (NMSC) provides:

Article II, Section 13, of the New Mexico Constitution was changed substantially in 2016. Every legislative session since, there have been attempts to unwind those changes, sometimes through statute, sometimes through a new amendment to the state constitution. SJR6 is more limited in scope than many of the prior attempts to unwind the changes made in 2016. SJR6 removes the provision that a prosecutor has to prove by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. Instead, the prosecutor has to prove that the person poses an unreasonable risk to the safety of any other person or the community or that the person is an unreasonable flight risk.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Joint Resolution 2 (HJR2), “Denial of Bail, CA” and relates to House Bill 163 (HB163), “Denial of Bail for Certain Offenses.” HJR2 would eliminate the requirement that a prosecuting authority “request a hearing and proves by” clear and convincing evidence the need for pretrial detention. It would instead add a rebuttable presumption that a person is dangerous if charged with felony offenses designated by law as a dangerous or violent felony offense. HB163 is a companion bill to HJR2 that lists the qualifying dangerous or violent felony

offenses.

ALTERNATIVES

LOPD notes prolonged pretrial detention is often cited as a speedy trial violation under the Sixth Amendment. The agency recommends the proposed amendment be partnered with legislation guaranteeing quick and efficient trials. LOPD also notes people incarcerated pending trial are not entitled to the same “good time” benefits as their post-conviction peers. Aligning incentives between the two populations could address the constitutional concerns the agency raises.

HJ/hg/sgs