

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 03/03/11

SPONSOR HJC LAST UPDATED _____ HJR 20/HJCS

SHORT TITLE Eliminate Right to Bail, CA SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	\$104.0*	NFI	\$104.0*	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Joint Resolution 20 is a proposed constitutional amendment which, if approved by the voters, would eliminate the constitutional right to bail, and instead provide that a court may grant or deny bail based on flight risk, danger to the community, nature and seriousness of the offense and other factors provided by law. It also would eliminate the presumption of no bail for capital (first degree) murder cases. It would require that the least onerous condition of release needed to comply with those factors be imposed.

HJR 20 also would continue to prohibit excessive bail, excessive fines, and cruel and unusual punishment. It would continue to require that an appeal from an order denying bail be given preference over all other matters.

FISCAL IMPLICATIONS

The Secretary of State has noted that placing an amendment on the ballot costs an average of \$104.0 to reimburse the county clerks for the cost of advertising. In the unlikely event the question is placed on a special election ballot, the approximate cost for that special election is \$1,675,541.55; the approximate cost for an all mail-in ballot election is \$1,968,179.31.

Only the specific additional cost for advertising the constitutional amendment is included in the operating budget table above, assuming that the question is presented to the voters at the next general election, and not at a special election called for that purpose.

SIGNIFICANT ISSUES

The AODA provides this summary of the law regarding bail under the Eighth Amendment to the U.S. Constitution:

Although an accused has a substantive due process right to pre-trial bail, the United States Supreme Court has recognized that that right is not absolute. In *U.S. v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095 (1987) the Supreme Court held that the Bail Reform Act's authorization of pretrial detention on the basis of future dangerousness constituted permissible regulation that did not violate substantive due process, and was not impermissible punishment before trial; legislative history of the Act indicated Congress formulated detention provisions as a potential solution to present societal problem of crimes committed by persons on release, and incidents of pretrial detention were not excessive in relation to the regulatory goal Congress sought to achieve, given careful limitation on circumstances under which detention could be sought...Consequently, the court held that the due process clause did not preclude pretrial detention imposed as a regulatory measure on ground of community danger pursuant to Bail Reform Act, when Government proved by clear and convincing evidence that arrestee presented an identifiable and articulable threat to individual or community.

Currently, in most non-capital cases, the amount of bail is already within the discretion of the courts under the existing New Mexico constitutional provision regarding bail and district, magistrate, metropolitan and municipal court rules. Those rules list factors to be considered that include, among others, the factors listed in the proposed amendment.

PERFORMANCE IMPLICATIONS

The AGO suggests that the actual impact of the proposed amendment may be the same as present court standards and practices.

MD/bym:svb