

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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 X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/16/24

Bill No: HB 44

Sponsor: Reps. W. Rehm, H. Vincent

Short Title: Pretrial Detention Presumption

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

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	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:

Section 1 of this bill would create a new section of Chapter 31, Article 3 NMSA 1978 relating to pretrial detention.

This bill apparently builds upon the holding in *State v. Ferry*, which found that “the nature and circumstances of a defendant's conduct in the underlying charged offense(s) may be sufficient, despite other evidence, to sustain the State's burden of proving by clear and convincing evidence that the defendant poses a threat to others or the community.” *State v. Ferry*, 2018-NMSC-004, ¶ 9. The bill, in Subsection F, defines a “dangerous felony offense” to be one of 15 specific enumerated offenses, any felony committed while the defendant brandished or discharged a firearm, or 15 offenses when the nature of the offense and the resulting harm are such that the court determines the crime to be a “dangerous offense.” In defining “dangerous felony offenses,” the bill establishes, as a matter of policy, which felony offenses, after a finding of probable cause, are in the category of offenses contemplated by *Ferry*.

Subsection B requires the prosecutor to present all relevant evidence demonstrating that: (1) the defendant committed a “dangerous felony offense,” (2) the defendant is a danger to any other person or to the community if released, and (3) no release conditions will reasonably protect any other person or the community.

Upon such a presentation of evidence, Subsection C establishes a rebuttable presumption that the prosecution has proven by clear and convincing evidence that the defendant is a danger to any other person or to the community if released and that no release conditions will reasonably protect any other person or the community. Subsection D then provides an opportunity to the defendant to rebut the presumption.

Subsection E confirms that the court makes the final determination of detention after consideration of whether the defendant has overcome the presumption of detention established in Subsection C, and after considering any other factors established by supreme court rule.

Section 2 of the bill contains an emergency provision, and this bill would take effect immediately.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo for pretrial detention.

AMENDMENTS

N/A