

<b>LFC Requester:</b>	<b>Austin Davidson</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**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**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** January 17, 2024  
**Bill No:** HB 44

**Sponsor:** Rehm  
**Short Title:** Pretrial Detention Presumption

**Agency Name and Code** NM Sentencing Commission (354)  
**Number:** \_\_\_\_\_  
**Person Writing** Douglas Carver  
**Phone:** 505-239-8362 **Email** dhmcarver@unm.edu

**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)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 44 creates a rebuttable presumption that defendants have to overcome to prove that they are not 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.

Under the bill, when there is a hearing by a prosecutor pursuant to the constitutional provisions regarding bail, a Magistrate Court, Metropolitan Court or District Court shall first make a probable cause determination as provided for by Supreme Court rule. Once probable cause has been determined, the pretrial detention hearing shall proceed in District Court. The prosecuting authority shall 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. Introduction of this evidence creates a rebuttable presumption that the prosecuting authority 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. If the prosecuting authority successfully establishes the presumption, the burden of proving that the defendant is not a danger to any other person or to the community and that release conditions exist that will reasonably protect any other person or the community rests with the defendant.

At the conclusion of the presentation of evidence by both parties, the court shall determine whether the defendant has successfully rebutted the presumption that the defendant is a danger to any other person or to the community and that no release conditions will reasonably protect any other person or the community, and in doing so, shall consider any relevant factors established by Supreme Court rule.

There is a long list of crimes that are defined as a "dangerous felony offense".

HB 44 has an emergency clause.

**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**

The presumptions enumerated in HB 44 seem to be in tension with the language of Art. 2, Sec. 13 of the New Mexico Constitution, which states simply, “Bail may be denied by a court of record pending trial for a defendant charged with a felony 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.” The New Mexico Constitution does not contemplate defendants charged with certain crimes or appearing before a court in certain circumstances are presumed a flight risk for a danger to the community. A rebuttable presumption shifts the burden of proof. As such, HB 44 runs afoul of the present constitutional provisions on pretrial release.

Three reports have been published recently on pretrial release in the state. The New Mexico Statistical Analysis Center (NMSAC) released its report “Bail Reform: Motions for Pretrial Detention and their Outcomes” in August 2021 (available here: <http://isr.unm.edu/reports/2021/bail-reform-motions-for-pretrial-detention-and-their-outcomes.pdf>). The Center for Applied Research and Analysis (CARA) at the University of New Mexico published “The Public Safety Assessment, Preventive Detention, and Rebuttable Presumptions in Bernalillo County” in December 2021 (available here: <https://isr.unm.edu/reports/2021/the-public-safety-assessment-preventive-detention-and-rebuttable-presumptions-in-bernalillo-county.pdf>); CARA also published a Report in Brief for that report, available here: <https://isr.unm.edu/reports/2021/the-public-safety-assessment-preventive-detention,-and-rebuttable-presumptions-in-bernalillo-county-report-in-brief>).

In September 2022, NMSAC released its report “Impact of Bail Reform in Six New Mexico Counties” (available here: <http://isr.unm.edu/reports/2022/impact-of-bail-reform-in-six-new-mexico-counties.pdf>). The purpose of that study was to analyze the impact of bail reform. The report concluded:

Bail reform has successfully decreased the number of people held pretrial and has shortened pretrial detention time overall. The decrease in days detained overall is driven largely by a decrease in time spent detained among those who spend some of, but not the entire, pretrial period in jail. It has also successfully decreased the frequency with which bond is set, both for all cases set at any point during the life of the court case and during the pretrial period among new felony cases. When bonds are set, they are lower on average than they were pre-reform. Finally, days to disposition decreased with bail reform, indicating that pretrial court efficiency may be improving overall, though days to disposition were slightly longer for those detained for the entire pretrial period after the amendment was implemented. However, the reform has coincided with a small increase in new offenses pretrial, including violent new offenses. We also observed a slightly higher rate of failures to appear following the implementation of bail reform, though the vast majority of individuals successfully pass the pretrial period. This varied, though, by county. (p. 49)

**PERFORMANCE IMPLICATIONS**

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**AMENDMENTS**