

<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:**

**Analysis.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 Prepared:** 2/2/2024  
**Bill No:** SB271

**Sponsor:** Daniel A. Ivey-Soto

**Agency Name and Code** NM AOC; 218  
**Number:** \_\_\_\_\_

**Short Title:** REPEAT FELONY  
OFFENDER NO BOND  
HOLD

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NA	NA		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NA	NA	NA		

(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>	Unknown	Unknown	Unknown	Unknown		

(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:

SB271 would amend Chapter 31, Article 3 NMSA 1978 Criminal Procedure Act by introducing judicial holds and automatic revocation hearings on defendants who have a pending felony charge, on pretrial release and pick-up a new subsequent felony charge.

**According to Section 1. A.:** When the chief clerk of a court receives notice that a person on pretrial release for a felony is subsequently arrested for a subsequent felony, the chief clerk of the court shall issue an order for the person to remain in custody without bond.

**According to Section 1. B:** The person shall remain in custody until each judge assigned to any previous felony cases holds a hearing to consider modification or revocation of the person's conditions of release."

SB271 contains an emergency clause.

**FISCAL IMPLICATIONS**

Any time automatic hearings are introduced into the criminal justice system, there is a requirement for additional resources to meet the needs of these additional hearings. SB271 would require hearings on defendants who were charged with a felony, violent or non-violent, to be held pending a hearing. This bill may increase hearings across the state which would result in a need for more resources within the courts, defense and prosecution. It could also lead to an increase in jail bed days.

**SIGNIFICANT ISSUES**

The NM AOC is currently implementing Legal and Evidence Based Best Practice Pretrial Service Programs in New Mexico. Fourteen Counties have implemented programs with six additional counties expected to implement in FY 24 and 25. Currently in districts with Pretrial Supervision Programs, when a defendant is on pretrial supervision for any criminal charges, charged with a new felony, DWI or violent misdemeanor offense, and in custody, the pretrial supervision program

requests a bench warrant to hold the defendant pending a hearing to address the new charges. If the defendant is charged with any other new offense or not in custody as a result of the new charge, the court is notified of the new offense and hearing is requested. Judges are typically notified of new charges within one business day of any new charge. NM Court rule 403 allows for modification or revocation of release as outlined below;

- **Current Revocation Process**

5-403. Revocation or modification of release orders.

A. Scope. In accordance with this rule, the court may consider revocation of the defendant's pretrial release or modification of the defendant's conditions of release

(1) if the defendant is alleged to have violated a condition of release; or

(2) to prevent interference with witnesses or the proper administration of justice.

B. Motion for revocation or modification of conditions of release.

(1) the court may consider revocation of the defendant's pretrial release or modification of the defendant's conditions of release on motion of the prosecutor or on the court's own motion. The judge has discretion to issue a bench warrant or issue a summons and schedule a hearing to revoke or modify conditions of release.

### **SB271 Would Change the Current Rules and Procedure**

- SB271 identifies in 1.A the court authority being the Chief Clerk.

Currently, Judges have the authority to detain a defendant once specific requirements are met. There is no authority or process for the Chief Clerk to place a hold on a defendant.

- SB271 Section 1.B states "the person shall remain in custody until each judge assigned to any previous felony cases holds a hearing to consider modification or revocation of the person's conditions of release."

Language in this section limits the court's authority and ability to efficiently administer justice. Court rules and procedures drive the fair and effective administration of justice to ensure compliance with individual's rights.

Current rule 5, 6, 7-403

D. Initial hearing.

(1) The court shall hold an initial hearing as soon as practicable, but no later than three (3) days after the defendant is detained.

(2) At the initial hearing, the court may continue the existing conditions of release, set different conditions of release, or propose revocation of release.

(3) If the court proposes revocation of release, the court shall schedule an evidentiary hearing under Paragraph E of this rule, unless waived by the defendant.

E. Evidentiary hearing.

(1) Time. The evidentiary hearing shall be held as soon as practicable. If the defendant is in custody, the evidentiary hearing shall be held no later than seven

(7) days after the initial hearing.

The current language in this bill requires the defendant to remain in detention until “each judge assigned to any previous felony case holds a hearing”. It is further complicated if the prior felony cases are in different jurisdictions across the state. A recommendation would be to allow the court to schedule these hearings based on judge and docket availability.

- **Potential Constitutional Conflicts:**

SB 271 directs court procedural activities, including identifying which judge must preside over the revocation hearing. In *Ammerman v. Hubbard Broadcasting*, 1976-NMSC-031, the Supreme Court determined that the Court maintains plenary rulemaking authority governing court procedures. Recently in *State v. Serna* the Court reiterated:

Since [*Ammerman*], it has been clear that the ultimate rule making authority over procedure resides in this Court, including the rules of evidence. This Court’s plenary authority to regulate procedure stems from our constitutional power of “superintending control over all inferior courts.” N.M. Const. art. VI, § 3; [*State v.*] *Belanger*, 2009-NMSC-025, ¶ 17, 146 N.M. 357 210 P.3d 783. We have previously acknowledged that our judicial authority “is not necessarily exclusive, and may co-exist with harmonious legislative enactments.” *Belanger*, [] ¶ 17 (citing *Albuquerque Rape Crisis Ctr. v. Blackmer*, 2005-NMSC-032, ¶¶ 5-9, 138 N.M. 398, 120 P.3d 820). The pivotal question is whether legislative initiatives are truly “harmonious” with our evidentiary rules.”

*State v. Serna*, 2013-NMSC-033, ¶ 14, 305 P.3d 936

The Court went on to rule that a statutory provision allowing admission of prior bad acts, had to comply with the already existing rules of evidence on the same topic.

## **PERFORMANCE IMPLICATIONS**

- SB271 contains an emergency clause to take effect immediately. Because this would require a change to Supreme Court Pretrial Release Rules, new rules would need to be developed and approved by the Supreme Court prior to implementation of SB271.
- In addition, rather than move forward with SB217, a recommendation would be for the Supreme Court to explore and consider data to drive changes to criminal justice procedures that are meant to impact and improve public safety.

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**