

LFC Requester:

Austin Davidson

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}

<i>Check all that apply:</i>		Date
	Amendmen	Prepared: Jan. 19, 2024
Original	<input checked="" type="checkbox"/> t	Bill No: SJR 11
Correction	<input type="checkbox"/> Substitute	
Sponsor	Se. R. Griggs	Agency Name and Code
:	Rep. G. Nibert	305 – New Mexico Department of Justice
	REQUIREMENTS FOR DENAIL OF BAIL	Number:
Short Title:		Person Writing
		fsdfs Analysis: AAG Felicity Strachan
		Phone 505-537-767
		Email: legisfir@nmag.gov
		il:

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

BILL SUMMARY

Synopsis: SJR 11 would amend Article 2, Section 13 of the New Mexico Constitution to (1) broaden the scope of crimes for which bail is not available, (2) broaden the scope of crimes for which bail can be denied, (3) remove a requirement that the denial of bail be made by “a court of record.”

- (1) Under current law, only capital offenses are specifically listed in the NM Const. as crimes for which bail is not available. This bill removes the word “capitol,” so the text just refers to “offenses.” This implies that a court could find bail unavailable for any offense.
- (2) The proposed changes to Section 1, Section C would shift the focus in a bail denial hearing from a felony-based analysis to a court’s finding “that a defendant is dangerous and that release conditions will not reasonably protect ... the community.” It also shifts the burden from requiring a prosecutor to prove that the defendant is dangerous to requiring a court to find that the defendant is dangerous.
- (3) This bill would amend Section 1, Section C to change the bail court from “a court of record” to “the court.”

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

The purpose of this bill is to make it easier for courts to deny bail or to find that bail is not available to a defendant awaiting trial. While the bill purports to provide a danger-to-the-community approach to bail analysis, the removing of the qualifiers “capitol” and “charged with a felony” broadens the scope of charges for which bail can be deemed unavailable or denied to any and all crimes on the books in New Mexico.

Under this proposed bill, a court could find that bail is unavailable for someone accused of a misdemeanor. The US Supreme Court recognizes that “[t]he government’s interest in preventing crime by arrestees is both legitimate and compelling.” U.S. v. Salerno, 481 US 739, 749 (1987). However, a brief review of caselaw indicates that this interest is not without its limits under the 5th and 8th Amendments. The proposed bill would be stronger if it: 1) limited the crimes for which bail can be denied or deemed unavailable to serious / dangerous crimes, and 2) provided some sort of framework for a court trying to decide whether to grant or deny bail under this

provision.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

No direct administrative implications to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship: HB 116 – HUMAN TRAFFICKING & SEXUAL EXPLOITATION CRIME

Relationship: HB 127 – AGE 21 FOR FIREARM PURCHASES

Conflict / Duplicate: HB 44 – PRETRIAL DETENTION PRESUMPTION

TECHNICAL ISSUES

See Other Substantive Issues, below.

OTHER SUBSTANTIVE ISSUES

This bill proposes to remove the current requirement that bail can be denied or deemed unavailable only for capitol crimes or felonies. This is very broad. Additionally, it does not give courts much guidance, eg factors to consider. Accordingly, a court could conceivably deny bail or find that bail was unavailable for the slightest of crimes.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

The language that has been removed should be replaced with something else and not just left totally unqualified.

Additionally, it seems like this bill and HB 44 aim to do the same thing. It would make sense to combine efforts.