

LFC Requester:	Austin Davidson
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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 20, 2024
Bill No: SJR 11

Sponsor: Griggs
Short Title: Requirements for Denial of Bail, CA

Agency Name and Code NM Sentencing Commission (354)
Number: _____
Person Writing Douglas Carver
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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

BILL SUMMARY

Synopsis:

SJR 11 makes changes to Article 2, Section 13 of the New Mexico Constitution regarding the provision of bail. It would remove the exception that only capital offenses “when the proof is evident or the presumption great” shall not be granted bail. It would remove the restriction that only a court of record can deny bail. It would provide that any defendant can be detained pending trial by removing the present restriction that bail denial only be for those charged with felonies. Additionally, it removes the requirement that the prosecutor has to prove that someone charged is dangerous, and instead the court is charged with making the determination.

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

Article 2, Section 13 of the New Mexico Constitution was changed substantially in 2016. Every Legislative Session since there have been attempts to unwind those changes, sometimes through statute, sometimes through a new amendment to the state Constitution. The changes that SJR 11 would make to Article 2, Section 13 of the New Mexico Constitution would not only undo many of the amendments made to this section in 2016, it would arguably make the denial of bail under the constitution far more readily available than at any time in state history. The language “All persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great” comes from the original language of the first state Constitution (see <https://newmexicohistory.org/centennial/documents/NMConstitution.pdf>). Additionally, the limitation on denial of bail to a court of record – originally District Court – has been in the Constitution at least since 1980, as had the restriction on denial of bail to felonies (see the annotations to Art. 2, Sec. 13 at NMOneSource.com). SJR 11 does more that reset the bail provisions back to 2016. It would take the state to a very new place regarding bail.

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