

LFC Requester:

Henry Jacobs

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/20/2026

Check all that apply:

Bill Number: HJR 2

Original Correction
Amendment Substitute

Sponsor: Rep. Andrea Reeb, Rep.
Nicole Chavez

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

Person Writing

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

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:

House Joint Resolution 2 (HJR 2) proposes to amend Article II, Section 13 of the New Mexico Constitution.

There are no notable amendments to Sections A and B.

Under Section C, the term “person” is substituted for “defendant.” Section C removes the requirement of the prosecution to request a hearing for a pretrial detention motion and substitutes the term “prove” with “presents” regarding the prosecution’s obligation for bringing evidence against the accused. The resolution also adds, “or that the person is a flight risk” regarding what the prosecution must prove by clear and convincing evidence. The resolution creates a rebuttable presumption of detention for individuals charged with “a felony offense designated by law as a dangerous or violent felony offense.” Under such circumstances, the accused would bear the burden by preponderance of evidence to rebut the presumption of detention.

Section D removes existing language “A person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail...” and is changed to read, “a person who is eligible for bail...”. This amendment would keep full discretion with the court, even with a rebuttable presumption because of the term “may” rather than “shall” in the language of the resolution (“...the court **may** presume that release conditions will not reasonably protect the safety...” and “**may** deny bail unless the person charged rebuts the presumption...”) (emphasis added).

Section 2 states that the amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The substitution of the term “defendant” for “person” is consistent with statutory language designating individuals who are alleged to have committed felony crimes as “persons” rather than “defendants” unless and until formal felony charges are brought against that person by information filed by the prosecution or grand jury indictment (See Rule 5-201, NMRA). Typically, an information or indictment is not filed at the time of arrest or pretrial detention

hearing. The change in designation conforms with New Mexico Rules of Criminal Procedure.

The addition of language, “or the person is a flight risk” adds an alternative ground for detention that was not previously explicitly included in factors for the courts to consider (See Rule 5-409 (F)(6) NMRA, See also *State v. Anderson*, 2023-NMSC-019, Citing, *State v. Mascareno-Haidle*, 2022-NMSC-015, ¶ 36, (“[C]ontrolling precedent from this Court ... makes clear that pretrial detention or release decisions cannot be made to turn on any single factor, be it the nature and circumstances of the charged offense(s) or otherwise.”))

The language of the resolution, which designates a shift from the prosecution’s burden of proof of dangerousness by clear and convincing evidence to a rebuttable presumption of dangerousness, mandates that if a person is charged with a felony offense “designated by law as a dangerous or violent felony offense” would require some clarity as to which law regarding “dangerous or violent felony offense[s]” the courts may rely upon. One example would be to reference Section 33-2-35 (N)(4), NMSA 1978, which defines “serious violent offenses” for purposes of meritorious deductions for persons imprisoned in the New Mexico Department of Corrections. Subsection (o) of this same statute gives discretion to the trial court to determine whether certain other crimes would qualify as “serious violent offenses” for purposes of meritorious deduction of a criminal sentence. Without express designation of which felonies are designated as “dangerous or violent,” the courts could develop caselaw to outline the parameters for designating a felony as “dangerous or violent.”

Practically speaking, if enacted, the burden would shift from the prosecution (who currently files a motion for detention under Rule 5-409 NMRA) to the accused to prove a lack of dangerousness or flight risk. Under these circumstances, the level of proof would also change from a clear and convincing standard currently required by the prosecution to prove, to a preponderance standard which is a lower legal standard, for the accused when presenting rebuttal evidence supporting release.

Because the accused would be charged with presenting rebuttal evidence in support of release, the trial court would be tasked with giving whatever weight, if any, to the accused’s evidence. Rules of evidence would presumably continue to not apply (See *State ex rel. Torrez v. Whitaker*, 2018-NMSC-005, holding that “the showing of dangerousness required by the new constitutional authority is not bound by formal rules of evidence but instead focuses on judicial assessment of all reliable information presented to the court in any format worthy of reasoned consideration. The probative value of the information, rather than the technical form, is the proper focus of the inquiry at a pretrial detention hearing.”)

This amendment ultimately would keep discretion with the court, even with a rebuttable presumption of detention because of the term “may” rather than “shall” in the language of the resolution (“...the court **may** presume that release conditions will not reasonably protect the safety...” and “**may** deny bail unless the person charged rebuts the presumption...”)(emphasis added).

PERFORMANCE IMPLICATIONS

Enacting this legislation would impact the way prosecutors at the NMDOJ proceed with issues of detention.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

HJR 2 is similar to federal rule of procedure, 18 U.S.C.A. § 3142(f)(1), insofar as both create a rebuttable presumption of detention for certain enumerated crimes. The federal rule also mandates that the government must first file a motion with the court even if a person is charged with one of the federally enumerated crimes triggering automatic detention. The accused would then present rebuttal evidence in support of release because they are not dangerous nor do they present a flight risk. See 18 U.S.C.A. § 3142(c). The burden of proof for an accused at the federal level is clear and convincing evidence that they are not dangerous or a flight risk, while the burden under HJR 2 would be by the lower, preponderance standard. As it stands now, this amendment is silent as how a detention hearing would be initiated. It may be presumed that a hearing would be automatic depending on the charge listed in an arrest warrant or criminal complaint submitted by a law enforcement officer.

HJR 22, if adopted, would require the courts to amend Rule 5-409 NMRA, which reflects the current language and standard of Article II, Section 13.

ALTERNATIVES

Authors may also wish to add a subsection similar to the federal procedure either mandating that the prosecution file a detention motion when a person is charged with an enumerated dangerous or violent felony offense which would then trigger a rebuttable presumption of detention or otherwise outline how proceedings would be initiated.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None