

LFC Requester:	Chavez
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**  
**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**  
[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)  
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**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** February 7, 2025      Check all that apply:  
**Bill Number:** HJR9      Original        Correction      
    Amendment        Substitute   

**Sponsor:** Rep. A.T. Martinez      **Agency Name and Code**      218  
**Short Title:** Denial of Bail CA      **Number:** \_\_\_\_\_  
    **Person Writing**      Celina Jones  
**Title:** Denial of Bail CA      **Phone:** 505-470-3214      **Email** aoccaj@nmcourts.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: 2023 HJR 9; 2024 SJR 11, and 2025 HJR14, HB165, SB196

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

HJR9 would submit for approval in the next general election or at any special election prior to that date that may be called for that purpose, an amendment to Article 2, Section 13 of the New Mexico Constitution. The amendment segregates the current unified provisions into paragraphs A through E. Paragraphs A and B propose no changes to current language. It is important to recognize that when these provisions refer to “bail” they mean release from detention prior to trial and not the monetary bail bond often used colloquially as the means of obtaining pretrial release.

Paragraph C removes the requirements for bail to be denied only by a court of record and the limitation that only those charged with a felony could be denied pretrial release (bail). HJR9 still requires the prosecutor to bring a motion to deny release, but relieves the prosecutor of the burden to prove detention is required, leaving it to the court to “find” clear and convincing evidence to support denial of release. HJR9 also adds as a new basis to deny release “that the person is a flight risk or that the person has previously failed to appear before a court as required.”

Paragraph D adds that if a person is not dangerous and is not a flight risk in the absence of a monetary bail bond (existing provisions), the requirement that the person also “has not previously failed to appear before a court as required” must be found in order for the defendant to qualify for the existing provision that the person shall not be detained solely because of financial inability to post a money or property bond.

Paragraph E reiterates the Paragraph D addition of the condition that a defendant “has not previously failed to appear before a court as required” in order for the defendant to be entitled to the existing provision that such a person who “has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond”

#### **FISCAL IMPLICATIONS**

Removing the limitation that only people charged with felony offenses could be denied pretrial release will create a significant increase in release hearings because misdemeanor defendants will be subject to pretrial detention. In 2024 approximately 101,502 criminal cases were filed in New Mexico Courts, excluding traffic cases. About 85%, of these cases were for misdemeanors. Adding many thousands of cases statewide eligible for pretrial detention would greatly increase the need for additional judges, court staff, jail beds, prosecutors and defense attorneys. In addition, HJR9 would allow non-record courts, which includes all magistrate courts and most criminal cases in the Bernalillo County Metropolitan Court, deny pretrial release. This would require significant additional

resources for those courts in order to hold the hearings and make findings, although there is no provision for the non-record court proceedings to be recorded for review by the next level court.

## **SIGNIFICANT ISSUES**

### Reducing the Burden of Proof for Pretrial Detention

HJR9 strikes language in the current constitutional provision that requires the prosecutor to “prove” the defendant should be denied pretrial release because no release conditions will ensure public safety. HJR9 retains the standard that a defendant “may” be held pretrial and leaves in the requirement for a hearing and requires the judge to find whether there is clear and convincing evidence to support denial of pretrial release. It is unclear what the intended consequence is for removing the prosecutor’s burden of proof while leaving in place the clear and convincing standard of proof.

With the elimination of the requirement to hold a pretrial detention hearing in a court of record, it is also unclear how courts are to review challenges to a detention order, except to begin the process from the start without reference to what happened in the non-record court, a process called *de novo* review that would add days to the detention period while the district court schedules and hears whatever evidence is presented at the district court hearing. Time in pretrial detention has well-documented, serious consequences.

The consequences of pretrial detention are difficult to reconcile given that many of those detained pretrial are charged with offenses that, were they to be found guilty, would be unlikely to result in incarcerative sentences. Research suggests that pretrial detention is linked to substantially higher recidivism rates post sentencing—suggesting that even if pretrial detention reduces some criminal activity during the pretrial period this is more than offset by much higher recidivism rates after individuals serve their sentences. Further, pretrial detention removes individuals presumed innocent from their families and communities—often resulting in the loss of employment and housing, interrupted treatment, and, in some cases, the loss of child custody. Court imposed fines and fees are passed without making income-based adjustments and failure to pay such fines and fees can result in revocation of one’s driver’s license and further incarceration.

Housing America’s prisoners is expensive—more than \$88 billion in local, state, and federal taxpayer monies were spent on corrections in 2016. Most of those in jail are awaiting trial—so the costs of jail are not to pay for punishment. Instead, pretrial detention is meant to ensure attendance at trial and to protect the public from harm by individuals who have not been convicted of a crime. But, in fact, failure to appear at trial is rare and often due to mundane reasons (e.g., forgetting the trial or hearing date). Similarly, new arrests of those released pretrial are also infrequent with arrests for violent crimes rare.

Pamela K. Lattimore, Cassia Spohn, and Matthew DeMichele, A Better Path Forward for Criminal Justice; Reimagining Pretrial and Sentencing, The Brookings Institution (April 2021), footnotes omitted, found at: <https://www.brookings.edu/articles/a-better-path-forward-for-criminal-justice-reimagining-pretrial-and-sentencing/>

The fiscal and time delay costs resulting from lack of clarity regarding the burden of proof and

expansion of detention hearings to non-record courts should be determined and considered relative to any hoped-for increase in court appearance rates or public safety.

### Mandating Pretrial Detention for “Flight Any Prior Failure To Appear in Court

HJR9 expands the bases for pretrial detention by providing that the court may order pretrial detention if the court finds the defendant is a flight risk or ever failed to appear (FTA) in court when required. HJR9 only requires the prosecutor to request a hearing, leaving it unclear if HJR9 contemplates the court itself will be required by this constitutional amendment to research and whether the defendant had a prior FTA in some court at some date in the past, whether for a misdemeanor or felony, or in another state or federal court. Whatever the source of the evidence, as written, regarding detention for “flight risk” HJR9 does not define this term beyond the requirement that it be established by clear and convincing evidence.

HJR9 does not limit the nature of crime for which a defendant had an FTA to, for example, a felony offense or dangerous violent offense. HJR9 as written does not require that the FTA relate to flight risk or any other pretrial detention objective, it authorizes pretrial detention for a prior FTA on a misdemeanor offense, a traffic citation, or in a civil case. Section D also appears to eliminate the requirement that a court not detain a person solely due to financial inability to post a money bond if the basis for detention includes a prior FTA. The intent may not be to detain defendants who lack financial resources, but the language is challenging and appears open to that interpretation.

There may be justifiable reasons for prohibiting pretrial release for a defendant who ever had a prior court FTA, as HJR9 authorizes, but it is difficult to find data to support this proposition. Often past FTAs resulted for circumstances unrelated to any risk the defendant is a threat to public safety or has an increased risk of FTA in the present case.

“In the vast majority of cases, people miss court for reasons that should be understandable. There are logistical challenges, like not being able to miss work, lacking transportation to court, or not having childcare. People may not have recent or updated information about when or where to appear in court. Some may not even know they had a mandatory court date in the first place. . . a missed court date does not usually pose a threat to public safety. Nonappearance is usually not intentional, and other factors frequently impact a person’s ability to get to court as scheduled. Moreover, in cases in which there is a real flight risk, courts use separate criteria to set bail or deny pretrial release altogether.”

Nazish Dholakia, *Millions of People in the U.S. Miss Their Court Date, With Dire Consequences*, Vera Institute of Justice (February 13, 2024), found at:

<https://www.vera.org/news/millions-of-people-in-the-u-s-miss-their-court-date-with-dire-consequences>

Present court rules and practices require the AOC to provide the district court with a risk analysis known as the Public Safety Assessment (PSA) as well as a Background Investigation Report

(BIR) for every defendant eligible for pretrial detention. The PSA scores a defendant's risk for re-arrest and failure to appear during the pretrial period. Regarding FTA, prior FTAs are a factor in the PSA analysis. Considerations of flight risk and prior criminal history currently help shape the court's imposition of conditions of release that mitigate these risks.

## **PERFORMANCE IMPLICATIONS**

HJR9 would substantially alter existing pretrial practices, requiring significant changes to Supreme Court Rules particularly for non-record magistrate courts. An expedited process for challenging a pretrial detention order entered in a non-record court would have to be created. Current statutes for non-record courts could be amended to require a record for detention hearings, which would make the appellate process less difficult but would require equipment and training to make a record of these proceedings. In addition, without a record of proceedings, appeals from non-record courts go to district courts to re-start the process. At best this adds delay to the pretrial detention process.

## **ADMINISTRATIVE IMPLICATIONS**

As noted above, new rules and training for non-record courts would be required to add pretrial detention hearings to the dockets of these courts.

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

HJR14, HB165, SB196 all address statutory or constitutional changes to pretrial detention.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

New Mexico courts will continue to administer the existing pretrial rules which comply with constitutional requirements and provide for pretrial detention of defendants who have demonstrated a likelihood of committing a new crime, particularly a violent crime, if released on pretrial conditions.

## **AMENDMENTS**