

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{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 30, 2025
Bill No: HJR 9-280

Sponsor: Alan Martinez
Short Title: Denial of Bail, CA

Agency Name and Code 280 - LOPD
Number: _____
Person Writing Kim Chavez Cook
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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 Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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:

HJR 9 is a joint resolution proposing amendments to Article 2, Section 13 of the New Mexico Constitution. The amendments would expand courts’ ability to hold defendants in detention *without eligibility for bail* while their cases are pending.

HJR 9 is similar to prior joint resolutions introduced as HJR 4 (2022); HJR 9 (2023); and HJR 3 (2024).

As context for the synopsis, this analysis initially notes: Article 2, Section 13 of the New Mexico Constitution authorizes judges to detain a felony defendant without bail pending trial “if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.” N.M. Const. Art II, § 13. Interpreting that constitutional provision, the New Mexico Supreme Court has made it clear that detention has two requirements:

In order to subject a presumed-innocent defendant to pretrial detention, the state is required to prove “by clear and convincing evidence that (1) the defendant poses a future threat to others or the community, and (2) no conditions of release will reasonably protect the safety of another person or the community.”

State v. Mascareno-Haidle, 2022-NMSC-015, ¶ 27, 514 P.3d 454 (quoting *State v. Ferry*, 2018-NMSC-004, ¶ 3, 409 P.3d 918).

HJR 9 proposes the following amendments to Article 2, Section 13:

HJR 9 would remove the requirement that such decisions be made by a “court of record,” expanding the ability to deny bail to magistrate judges.

It would remove the limitation of bail denial to defendants charged with a felony, permitting detention without bail even in misdemeanor cases.

It would remove the explicit burden on the State to “prove” that a person should be detained, instead only requiring court to “find” the requirements for detention are met.

In addition to dangerousness, HJR 9 would allow detention if the person is a flight risk *or* “has previously failed to appear before a court as required.”

HJR 9 would thus allow a person be held pretrial based on inability to afford bond based on a finding that they had previously failed to appear before a court.

In sum, absent legislation setting limitations in the scope for bail denial, HJR 9 would give courts full discretion to detain anyone without bail to ensure *either* public safety *or* court appearance.

FISCAL IMPLICATIONS

The fiscal impact of this joint resolution alone, even without looking to the proposed legislation in this area, is impossible to determine. By expanding detention to misdemeanants and questionable flight risks, however, would certainly increase the number of defendants against whom the State would *seek* pretrial detention. It would also certainly result in an increase in the number of detention hearings required by the courts and the number of defendants being held pretrial, which would impact resources in the courts and county jails around the state. It would also increase the number of defendants appealing their detention decisions, also placing a further burden on the appellate courts.

Furthermore, looking at current 2025 legislation such as HB 165 and SB 196, as an example of changes this joint resolution might enable, the potential for huge fiscal implications is palpable. LOPD estimates those bills would incur a **recurring increase of \$1,892,217** to the LOPD budget. Analyst refers LFC to the fiscal implications analyses for those bills as well.

SIGNIFICANT ISSUES

As noted, this joint resolution would dramatically expand the scope of pretrial detention, authorizing courts to deny bail to someone accused of a misdemeanor or who presents no danger to the community, but may not be deemed reliable enough to appear for hearings (even if not a true flight risk) based – potentially – on a single missed hearing at some point in their past.

It would simultaneously relieve the State of its current constitutional burden of *proving* dangerousness in order to impose detention without bail. In other words, the State would no longer need to present evidence “that no release conditions will reasonably protect ... the community,” N.M. Const. art. 2, § 13, but could instead *presumably* rely on the mere fact that charges have been filed (regardless of the underlying factual allegations or even the nature of the charges). A massive increase in the number of defendants held pretrial is assured.

Sweeping detention proposals without individualized public safety assessments are over-inclusive in their effort to capture individuals likely to be a danger to the community. An accused could be detained primarily on the basis of unproven charges (for which the accused would otherwise be presumed innocent), and without considering the factual nature of those charges in a particular case. Consequently, people who are actually innocent of the target charges, with no criminal history, could be held in detention without any opportunity for release while awaiting trial. Pretrial delay could easily result in this person being held for periods well over a year at the county’s not insignificant expense. Even if ultimately found guilty, this resolution could result in a lengthy period of incarceration even in cases where the judge might not have imposed an incarceration sentence after conviction.

This joint resolution would also remove the requirement that decisions be made by a court of record. This would allow magistrate judges, who are not lawyers, to make these decisions. Because of the procedures inherent to non-record courts, such decisions would then have to be appealed to the district court, de novo, requiring a new hearing each time. This would result in considerable additional work for all parties.

As the New Mexico Constitution was amended in 2016, “Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.” N.M. Const. art. II, § 13. Thus, New Mexico voters decided only seven years ago that under the New Mexico Constitution, the State bears the burden of persuading a court that a particular defendant is in fact dangerous.

This joint resolution proposes to return the issue to the ballot despite a lack of any evidence that a change is necessary. Several years ago, the Administrative Office of the Courts attested that the 2016 bail reform was working. See <https://www.abqjournal.com/1395438/top-nm-court-official-bail-reform-is-working.html> (“Artie Pepin, director of the Administrative Office of the Courts, said University of New Mexico researchers found that 83% of released defendants during a recent nearly two-year period had no new arrests while awaiting trial. And of those arrested, only a small number were accused of committing first-degree felonies that are typically the most violent types of crimes.”). A previous report prepared for the New Mexico Sentencing Commission looked at release rates from July 2017 until June of 2021. The numbers are similar to those quoted above. Approximately 81 percent of released defendants had no new arrests. Of those arrested, only a miniscule percentage were arrested for first or second degree felonies. See The Public Safety Assessment, Preventive Detention, and Rebuttable Presumptions in Bernalillo County, prepared for New Mexico Sentencing Commission, December 2021, pp. 13, 16.

According to LOPD internal data for Albuquerque, as of December 31, 2024, 8,110 detention cases were filed in Albuquerque from 2017 to 2023 and 3,992 (49.2%) of those were granted. 458 of those, or 11.5%, were not indicted within the 10 days allowed by rule to continue detention. 7,780 detention cases have “resolved,” meaning a final outcome is known. Of those resolved cases, 18.1% were not indicted within the year, and 44.0% ended without a state conviction. Only 17.4% of people on whom the State filed for detention were ultimately sentenced to prison for a conviction on that case.

Keeping in mind that a person charged with a crime is presumed innocent, it is also important to compare pretrial detention numbers with the ultimate outcome of the criminal case. Previous LOPD internal data indicates that 23.8% of defendants detained in Albuquerque between 2017 and 2022 were not ultimately convicted of anything (589 of 2478). An additional 120, or 4.8%, pled down to a misdemeanor offense, possibly just to get out of jail. These numbers do not include defendants who were released or those who were convicted of some lesser felony, including felonies that would not be considered “dangerous” by any measure. Of those convicted, over 30% receive probated sentences because once all the circumstances are known, incarceration is often no longer deemed appropriate.

This proposal would result in the detention of a much wider swath of presumptively innocent defendants with no provable benefit to public safety.

PERFORMANCE IMPLICATIONS

To the extent HJR 9 would require more hearings at short notice, an unknown (but very likely greater) portion of which would be appealed, a concomitant increase in resources for the courts, DAs, LOPD and Corrections, would be required.

ADMINISTRATIVE IMPLICATIONS

None for LOPD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

Status quo

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None noted.