

LFC Requester:	
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**AGENCY BILL ANALYSIS
2025 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 2/24/2025
Bill No: SB 309-280

Sponsor: Sen. Antonio Maestas
Short Title: Pretrial Release Notifications & Data

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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)

Several other bills this session would also amend the Victims of Crime Act. They are:

- HB 190, Victims of Crime Act Changes;
- HB 86, Human Trafficking Changes;
- HB 104, Crimes Against Peace Officer Definitions;
- SB 74, Time Limit for Prosecuting Certain Crimes; and
- HB 204, Refusal of Certain Pretrial Statements.

None appear to conflict with this bill.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 309 proposes a statutory change allowing all records pertaining to pretrial conditions of release violations to be released as public records, so long as they do not provide geographical coordinates, protected health information, or protected personal identifying information, “or that the information be redacted.”

Section 2 would amend Section 31-3-12, which governs warrantless access to pretrial GPS data by law enforcement. Currently, in order to obtain GPS data for a defendant on pretrial release, officers must have “reasonable suspicion to believe the data will be probative.” This bill would instead allow officers to obtain data “on request,” eliminating the requirement of reasonable suspicion.

This section would also eliminate two other provisions in Section 31-3-12. Currently, any warrantless GPS data provided this way may not be more than one year old (so older information is exempt from disclosure, unless the officer has a warrant). Additionally, the section currently specifies that the disclosed data “shall not be made a part of any public record unless admitted as evidence during a criminal trial.” SB 309 would delete this language, allowing officers warrantless access to older GPS data and allowing them to make the data public.

Section 3 would create a new section of the Victims of Crime Act, which appears at §§ 31-26-1 through -15, stating that if a person violates conditions of pretrial release, the pretrial services officer “shall immediately notify the court, the prosecuting authority, the defendant’s counsel and the victim.”

FISCAL IMPLICATIONS

The Law Offices of the Public Defender (LOPD), on behalf of defendants would very likely challenge the release of GPS or other client confidential data if there were efforts to make it public or make it available to law enforcement in violation of their constitutional rights while

they were on pre-trial services. This litigation would require resources from LOPD, prosecutors, and courts. While the LOPD would likely be able to absorb this additional litigation in existing case, these cases would likely involve protracted constitutional challenges.

SIGNIFICANT ISSUES

SB 309 broadens the scope of records that would be made available to the public and law enforcement, but fails to define the terms used in its new provisions. SB 309 allows release of records that *may* indicate pre-trial conditions have been violated before there has been any judicial determination of the violation.

The bill's focus is on records that may support a violation of conditions of pretrial release, but this concept is undefined. Currently, this is a judicial determination, not one made by pretrial services personnel or law enforcement. Under the current system, COR violations are referred to the judge and the defendant is "held without conditions of release pending an initial hearing" before the judge who ordered pretrial release. Also referred to the judge are any actions considered "non-technical violations" meaning "an act or omission by the defendant that is a willful violation of a condition of release that causes or presents a risk of harm to themselves or others. Non-technical violations are reported to the court and parties with a request for hearing or bench warrant. Judges retain discretion as to the issuance of a bench warrant. A Judge shall either hold a hearing or file an order stating why a hearing is not necessary and consider revocation or modification of a defendant's conditions of release." See *Violation of Conditions of Release*, at <https://pretrial.nmcourts.gov/wp-content/uploads/sites/57/2024/05/Violation-of-Conditions-of-Release-Definitions.pdf>

The bill allows for release of "records that show or support a violation," or rather records that *may* indicate a violation. There are countless reasons for the appearance of a conditions of release violation, many of which are not determined to be serious violations. Data from the 2024 Annual Report, AOC Pretrial Justice Program, p. 16, found at <https://pretrial.nmcourts.gov/wp-content/uploads/sites/57/2025/01/Pretrial-Justice-Program-Annual-Report-2024.pdf> shows that of the approximately 245,000 GPS alerts from October 2023 to September 2024, only 3,250 resulted in elevated investigatory responses and of those, 201 bench warrant requests. Ultimately less than 1% of these alerts result in bench warrants being issued. Considering that this bill also requires pretrial services personnel to "immediately notify the court, the prosecuting authority, the defendant's counsel and the victim," this would place a huge burden on pretrial services to provide multiple notifications for every alert despite the vast majority not resulting in further action. Analyst notes that "immediate" notification is an impossibility and suggests replacement with a set period of time or a "reasonable" time.

SB 309 would make information about individuals charged but not convicted of a crime public record, limiting the privacy interests of those individuals. United States law treats GPS location data as a private record. See *Carpenter v. United States*, 138 S. Ct. 2206, 2211-12, 2217 (2018) (holding cell phone subscribers have a reasonable expectation of privacy in cell-site location data, which constantly records a cell phone user's physical movements). The Court emphasized that cell-site location information "provides an all-encompassing record of the holder's whereabouts," and the "time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations." *Id.* at 2217 (internal quotation marks and citation omitted). The Court further emphasized that, beyond the privacy interest in the movements of a person's vehicle, "[a] cell phone faithfully follows its owner beyond public

thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales." *Id.* at 2218 (citation omitted). Finally, "the retrospective quality of the data" allows the government to "travel back in time to retrace a person's whereabouts" without requiring police to "know in advance whether they want to follow a particular individual, or when." *Id.*

Defendants waive their privacy interests for the limited purpose of supervised release, but this waiver is not absolute. Even defendants who have been convicted of crimes and are placed on probation retain some right to privacy under the state and federal constitutions. *See State v. Baca*, 2004-NMCA-049, ¶ 41, 135 N.M. 490 (warrantless searches of probationers are allowed *if* there is reasonable suspicion of a probation violation *and* the suspected violation "is reasonably related to the probationer's rehabilitation or to community safety"); *State v. Bolin*, 2010-NMCA-066, ¶ 14, 148 N.M. 489 (authority for probation officers to conduct searches "may not be exercised as a proxy or surrogate for police investigations").

Defendants who are released pretrial have not been convicted of a crime, and they retain the presumption of innocence. They would have at least as much protection as (and probably *greater* protection than) probationers under the Fourth Amendment and Article II, Section 10 of the New Mexico Constitution. By authorizing release of GPS data without reasonable suspicion, SB 309 Sections 1 and 2 would likely violate the protections against unreasonable search and seizure identified in *Baca* and *Bolin*. Defendants do not waive these rights by agreeing to pretrial release on GPS monitoring.

Under current law, police officers should not have difficulty getting GPS data that they need for criminal investigations. Reasonable suspicion is not a high bar: "Police officers possess reasonable suspicion when they are aware of specific articulable facts that, judged objectively, would lead a reasonable person to believe criminal activity occurred or was occurring." *State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592 (internal quotation marks omitted). This is the same standard required for police to pull a car over or to stop a pedestrian on the street, and it is lower than the burden required to get a warrant. It is not an onerous standard.

Additionally, Section 1 says that it would exempt the release of "precise geographical coordinates, protected health information [and] protected personal identifying information." These terms are not defined. If "precise geographic coordinates" are not public, would it still be public information that a defendant was on a particular block or in a particular neighborhood at a given time? Would a positive drug or alcohol test constitute "protected health information"? These questions would likely have to be litigated.

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**